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ABSTRACT

This policy manual is a guide for state education agencies (SEAs), local education agencies (LEAs), parents, and other interested parties wishing to obtain funding for basic compensatory education programs operated by school districts under Part A of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988. These programs, previously contained in Chapter 1 of the Education Consolidation and Improvement Act of 1988 (ECIA), must meet the special educational needs of educationally deprived students in areas and schools with high concentrations of low-income families, and the needs of children in local institutions for neglected or delinquent children. The following areas are discussed: (1) basic grants; (2) concentration grants; (3) carryover; (4) reallocation; (5) use of funds; (6) assurances and applications; (7) the General Education Provisions Act; (8) grantbacks; (9) Education Department general administrative regulations; (10) eligible schools; (11) eligible children; (12) schoolwide projects; (13) parental involvement; (14) services for private school children; (15) fiscal requirements; (16) evaluation; (17) program improvement; (18) state administration; and (19) assignment of personnel. An index is included. The following materials are appended: (1) Public Law 100-297; (2) Chapter 1 regulations; (3) the General Education Provisions Act; and (4) the Education Department General Administrative Regulations. (FMW)

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CHAPTER 1 POLICY MANUAL

BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

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Part A of Chapter 1 of Title I
Elementary and Secondary Education Act of 1965
amended by the
Augustus F. Hawkins-Robert T. Stafford
Elementary and Secondary School Improvement Amendments of 1988
(Public Law 100-297)

UD 027 618

U.S. DEPARTMENT OF EDUCATION
Office of Elementary and Secondary Education
Compensatory Education Programs

April 1990

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INTRODUCTION

The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100-297, amended the Elementary and Secondary Education Act of 1965 (ESEA). Part A of Chapter 1 of Title I, ESEA (Chapter 1), reauthorizes a program previously contained in Chapter 1 of the Education Consolidation and Improvement Act of 1981 (ECIA). Part A of Chapter 1 provides financial assistance through State educational agencies (SEAs) to local educational agencies (LEAs) to meet the special educational needs of educationally deprived children in school attendance areas and schools with high concentrations of children from low-income families and the needs of children in local institutions for neglected or delinquent (N or D) children. This assistance is to improve the educational opportunities of educationally deprived children by helping them succeed in the regular program, attain grade-level proficiency, and improve achievement in basic and more advanced skills that all children are expected to master.

On October 21, 1988, the U.S. Department of Education (ED) published a notice of proposed rulemaking for this program in the Federal Register (53 FR 41466-41492). Almost 500 letters, which included several thousand comments, were received from State and local educational agency officials, teachers, organizations, and members of Congress. Final regulations were published in the Federal Register on May 18, 1989 (54 FR 21752-21809).

Section 1436 of Chapter 1 requires the Department to prepare a policy manual, distribute it to SEAs and LEAs, and make it available to parents and other interested individuals, organizations, and agencies. The purposes of the policy manual are as follows:

- Assist LEAs in preparing applications, meeting applicable program requirements, and enhancing the quality, increasing the depth, or broadening the scope of Chapter 1 programs.

- Assist SEAs in achieving proper and efficient administration of Chapter 1 programs.

- Assist parents to become involved in the planning, implementation, and evaluation of Chapter 1 programs and projects.

- Ensure that the officers and employees of ED, including auditors, uniformly interpret, apply, and enforce the Chapter 1 requirements.

The guidance in this document applies to programs under Part A of Chapter 1 (basic programs operated by LEAs). This guidance does not apply to the other Chapter 1 programs even though those programs may, in part, be operated by LEAs. LEAs may rely on this guidance unless it is inconsistent with guidance provided by the SEA. While SEAs may wish to consider the guidance in this document in developing their own guidelines and standards, they are free to develop alternative approaches that are consistent with the Chapter 1 statute and regulations, but may be more in keeping with particular needs and circumstances. In other words, this policy manual contains acceptable but not exclusive guidance concerning Chapter 1 requirements. However, compliance with the guidance in this document shall be deemed compliance with the statute and regulations by ED officials, including the Inspector General.

ACRONYMS

The following acronyms are used in this policy manual:

AFDC - Aid to Families with Dependent Children
CAI - Computer Assisted Instruction
CRT - Criterion-Referenced Test
EAB - Education Appeal Board
ECIA - Education Consolidation and Improvement Act of 1981
ED - U.S. Department of Education (or Department)
EDGAR - Education Department General Administrative Regulations
ESEA - Elementary and Secondary Education Act of 1965
ESL - English As A Second Language
FTE - Full-Time Equivalent
FY - Fiscal Year
GEPA - General Education Provisions Act
IEP - Individualized Education Plan
LEA - Local Educational Agency
LEP - Limited English Proficient/Proficiency
N or D - Neglected or Delinquent
NAPPP - National Average Per Pupil Payment
NCE - Normal Curve Equivalent
NRT - Norm-Referenced Test
OALJ - Office of Administrative Law Judges
OMB - Office of Management and Budget
R-TAC - Rural Technical Assistance Center
SEA - State Educational Agency
SPPE - State Per Pupil Expenditure
TAC - Technical Assistance Center

BASIC GRANTS

Statutory Requirement

Section 1005 of Chapter 1 of Title I, ESEA

Regulatory Requirements

Sections 200.2, 200.3, 200.22, 200.23, and 200.24

The Chapter 1 LEA program includes two types of subgrants for LEAs--basic grants and concentration grants. Under the basic grant formula, LEAs are entitled to grants based on their numbers of formula children multiplied by a cost factor derived from the State per pupil expenditure (SPPE) for elementary and secondary education. National data on numbers of eligible children are readily available only to the county level. Consequently, the Secretary applies the formula to the county level and gives SEAs responsibility for allocating county amounts to LEAs in cases where LEAs are not coterminous with counties. In carrying out this responsibility, SEAs must allocate each county's basic grant amount among LEAs within the county on the basis of the best available data on the number of children from low-income families.

Q1. **Does Congress appropriate a specific amount for the Chapter 1 LEA program annually?**

A. Yes.

Q2. **If the Congress does not specify amounts for basic grants and concentration grants, how does the Secretary determine those amounts?**

A. Unless the appropriation bill specifies otherwise, section 1006(c) of Chapter 1 specifies that the first $400 million of the Chapter 1 LEA program appropriation in excess of $3.9 billion is reserved for concentration grants. Whenever the amount appropriated exceeds $4.3 billion, 10 percent of the appropriation is reserved for concentration grants. The remainder is available for basic grants.

Q3. **Are all basic grant funds distributed among the 50 States, the District of Columbia, and Puerto Rico?**

A. No. One percent of the basic grant funds is reserved for the Secretary of the Interior, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Republic of Palau.

Q4. **How does the Secretary determine the amount each SEA in the 50 States, the District of Columbia, and Puerto Rico is entitled to receive?**

A. Basic grant allocations are determined on a county-by-county basis in accordance with the statutory allocation formula in section 1005 of Chapter 1. Each State's basic grant allocation is the sum of the county aggregate allocations in the State. The county allocations are based on the number of formula children multiplied by a cost factor derived from average SPPE.

Q5. **What are the factors in the count of eligible formula children?**

A. The primary factor is the number of children, ages 5-17, in families with incomes below the poverty level, based on data from the latest decennial census. These data represent approximately 96 percent of the Chapter 1 formula children and remain constant until new data from the decennial census become available every ten years. Census poverty data are one of the few types of nationally uniform data available. In addition to the census data, the formula includes annually updated data on the number of children, ages 5-17, who are in families receiving Aid to Families with Dependent Children (AFDC) payments above the current census poverty level, in institutions for N or D children that are not State operated, and in foster homes supported with public funds.

Q6. **What is the source of these data?**

A. The Department of Commerce, Bureau of the Census, furnishes the county decennial census data to the Secretary. The Department of Health and Human Services collects October caseload data for AFDC and foster children annually through State agencies administering child welfare and public assistance programs and furnishes the data to the Secretary. The Secretary conducts an annual survey through the SEAs to collect October caseload data on the number of N or D children who resided in institutions for 30 consecutive days, at least one day of which was in October of the preceding year.

Q7. **What is the average SPPE cost factor that is used in the allocation formula?**

A. Each SEA is required to report annually the amount of State, local, and Federal funds expended for elementary and secondary education and average daily attendance data. From these data, the Secretary deducts the expenditures for Chapters 1 and 2 and computes the average SPPE. The cost factor in the allocation formula is 40 percent of the State's average per pupil expenditure, except that no State's cost factor may exceed 120 percent of the national average per pupil expenditure nor fall below 80 percent of the national average per pupil expenditure. Additional adjustments are made to Puerto Rico's expenditure data.

Q8. **Are the latest school year expenditure data used for the cost factor in the formula?**

A. No. The statute requires that per pupil expenditure data for the third preceding fiscal year be used in the allocation formula.

Q9. Why does the Secretary compute allocations on a county basis?

A. The statute provides that the Secretary will make allocations for LEAs if satisfactory data are available. In any case in which such data are not available, allocations are to be made on a county-by-county basis. The data needed for the allocation formula are readily available for the entire Nation only to the county level. Consequently, the Secretary applies the formula to the county level.

Q10. Does each county receive an allocation that equals its number of formula children multiplied by the State cost factor?

A. No. The statute provides that if the amount appropriated is insufficient to pay the county amounts computed by the formula, then the allocations are to be ratably reduced to the amount appropriated.

Q11. Do all counties in the Nation receive a basic grant allocation?

A. No. To receive a basic grant allocation, a county must have at least 10 children who are eligible to be counted for the formula.

Q12. Is there a State minimum basic grant allocation?

A. Yes. The statute provides for a State minimum grant when the appropriation exceeds the fiscal year (FY) 1988 appropriation and the amount available for concentration grants is $400 million or more or when the amount available for basic grants exceeds the 1988 level by $700 million.

Q13. What is the State minimum allocation?

A. Each State is guaranteed a minimum allocation that is equal to the lesser of--

- .25 percent of the total amount available for basic grants;
- 150 percent of the previous year's basic grant allocation; or
- 150 percent of the national average per pupil payment (NAPPP) multiplied by the previous year's count of basic grant formula children. The NAPPP is determined by dividing the basic grant appropriation by the number of basic grant formula children.

Q14. When does the Secretary notify SEAs of the county allocations?

A. The target date is March 15.

Q15. Could announcement of the county allocations be made earlier so LEAs would have more planning time prior to the beginning of the school year?

A. The Secretary is dependent on all agencies to submit the required formula data in a timely manner. The statute requires October caseload counts for AFDC, foster, and N or D children and these data are usually not complete until the end of the following January. Additionally, the formula children counts required for the State agency programs in Part D of Chapter 1 are not available until late January. Once all data are complete, approximately six weeks are required to process the data and calculate the allocations.

Q16. **What is the SEA's responsibility for determining LEA basic grant allocations?**

A. The statute provides that when the Secretary determines allocations for counties, the SEA shall allocate each county aggregate amount among LEAs in that county.

Q17. **Unless the Secretary has approved statewide allocations in accordance with §200.24, what data and procedures must an SEA use to distribute county allocations among eligible LEAs?**

A. The SEA must first determine and set aside the amount of the county allocation generated by the formula count of N or D children. The remaining county amount must be distributed on the basis of low-income data. The Chapter 1 regulations provide SEAs flexibility in selecting the low-income data they use to determine basic grant allocations for LEAs. This allows the SEAs to use data more current or accurate than the census counts that are used in the county allocation formula. Although SEAs possess broad discretion over these data, they must further the purposes of Chapter 1 in directing funds to low-income areas. If an SEA decides to use data that are different from those used in the county allocation formula, the SEA must ensure that it is using the best available data on the number of children from low-income families.

Q18. **May an SEA use a variety of sources of low-income data within the State to distribute the various county allocations among LEAs?**

A. No. In determining the number of children from low-income families in the LEAs in each county, the SEA must use the same measure of low-income throughout the State.

Q19. **May an SEA use a combination of low-income factors if these data are consistently used for allocation purposes throughout the State?**

A. Yes. For instance, a State might choose to use both decennial census data and current free-lunch data. The SEA must weight the data, however, so that LEA allocations are not determined on the basis of duplicate counts of children.

Q20. **Are all LEAs eligible to receive basic grants?**

A. No. LEAs in ineligible counties, i.e., counties with fewer than 10 formula children, are not eligible to receive basic grants.

Q21. Must an SEA make allocations to all eligible LEAs?

A. No. The SEA is not required to allocate basic grant funds to an LEA with fewer than 10 children eligible to be counted under the formula.

Q22. Is there a minimum LEA basic grant?

A. Yes. Each LEA's basic grant allocation may be no less than 85 percent of the amount it received in the previous year.

Q23. Does this 85 percent "hold harmless" amount apply to only the portion of funds allocated to an LEA on the basis of low-income data?

A. No. The "hold harmless" amount is computed on the basis of the LEA's total basic grant allocation in the previous year, i.e., the separate amount allocated for N or D children and the portion allocated on the basis of low-income data.

Q24. If an LEA is unable or unwilling to provide services to N or D children, may it retain the funds that were allocated on the basis of these children?

A. No. If an LEA is unwilling or unable to provide services to N or D children, the SEA must reduce the LEA's allocation by the amount generated by the N or D children.

Q25. May the SEA transfer these funds to another LEA?

A. Yes. These funds may be assigned to another State agency or LEA that agrees to assume educational responsibility for the N or D children.

Q26. May the SEA retain these funds?

A. Yes. If the SEA assumes educational responsibility for the N or D children, it is entitled to the funds generated by those children.

Q27. If neither the SEA nor another agency is willing to assume educational responsibility for N or D children, what happens to the funds?

A. The SEA must reduce the LEA's allocation by the amount that was based on N or D children. The funds are not available for reallocation to other LEAs.

Q28. If an institution closes and the children are transferred to an institution in another LEA, must the SEA transfer the funds to the LEA in which the children now reside?

A. Yes. The SEA must adjust the allocations of the two LEAs to reflect the transfer.

Q29. Must the LEA account separately for the funds based on N or D children?

A. The SEA decides whether to require an LEA to make a separate application or budget or to keep a separate account of Chapter 1 funds expended for N or D children. The LEA's application for Chapter 1 funds, however, must contain a description of the services to be provided to N or D children.

Q30. Are there other special circumstances that would allow SEAs to make adjustments when determining final LEA allocations?

A. Yes. Section 200.23(b)(2) of the regulations provides for adjustments to LEA allocations where (1) a school district of an LEA overlaps a county boundary; (2) an LEA serves a substantial number of children from the school district of another LEA; or (3) an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA.

Q31. Are there circumstances that would allow an SEA to disregard county allocations when determining basic grant allocations for LEAs?

A. In any State in which a large number of LEAs overlap county boundaries, the SEA may apply to the Secretary for authority to make allocations directly to LEAs without regard to counties. If an SEA allocates directly to LEAs, the SEA must use the same factors as those used by the Secretary in the county allocation formula.

Q32. May basic grant funds that remain unobligated at the end of the fiscal year for which they were appropriated be carried over for use during the succeeding fiscal year?

A. Yes. Section 412(b) of the General Education Provisions Act (GEPA) provides that any basic grant funds that are not obligated by the end of the fiscal year for which the funds were appropriated may be carried over and used during the succeeding fiscal year. However, section 1432(b) of Chapter 1 limits the amount that may be carried over and used in the succeeding year (see the Carryover section).

CONCENTRATION GRANTS

Statutory Requirement

Section 1006 of Chapter 1 of Title I, ESEA

Regulatory Requirements

Sections 200.2, 200.3, and 200.25

The Chapter 1 LEA program includes two types of subgrants for LEAs--basic grants and concentration grants. The funds for basic grants provide financial assistance for educationally deprived children in nearly every school district in the Nation. Concentration grants are designed to augment basic grants in LEAs with very high concentrations of children from low-income families. Funds provided for concentration grants are used by the LEAs in the same manner as those provided for basic grants and do not require separate accounting or programming.

Q1. If the amount is not specified in the annual appropriation act how does the Secretary determine the amount available for concentration grants?

A. Unless otherwise specified in an appropriation act, the Secretary reserves for concentration grants the amount of the Chapter 1 LEA program appropriation specified in section 1006(c) of Chapter 1. Specifically, the first $400 million in excess of $3.9 billion must be reserved for concentration grants. Whenever the appropriation exceeds $4.3 billion, 10 percent of the appropriation must be reserved for concentration grants.

Q2. How are concentration grant allocations determined for each State?

A. The Secretary determines which counties in each State qualify for concentration grant funds and distributes the concentration funds among the eligible counties in accordance with the statutory allocation formula. Each State's concentration grant is the aggregate of the sums for eligible counties in the State.

Q3. Is there a State minimum allocation for concentration grant funds?

A. Yes. However, the minimum allocation is not a specified amount. The Secretary computes the State minimum allocation by taking the greater of $250,000 (unless a different amount is specified in the appropriation act) or the following:

The lesser of--

- .25 percent of the total appropriation for concentration grants;

- 150 percent of the State's previous year's concentration grant; or

- 150 percent of the NAPPP multiplied by the number of concentration grant formula children in the State in the preceding year. The NAPPP is derived by dividing the appropriation for concentration grants by the number of children counted in the concentration grant formula for all eligible counties in the Nation.

Q4. How does a State know when it has received a State minimum allocation for concentration grants?

A. The Secretary notifies States of county allocations for concentration grants. In States where eligible counties do not generate concentration funds based on the allocation formula that exceed the State minimum grant, the States are notified of an additional lump sum amount to bring the State up to its guaranteed minimum allocation.

Q5. Which counties are eligible for concentration grant funds?

A. A county is eligible if the number of children counted in the basic grant formula in the preceding year exceeds 6,500 or 15 percent of the total number of children, ages 5-17, in the county. Approximately 1,900 out of the 3,100 counties in the country, including independent cities, were eligible in FY 1989.

Q6. Are the same factors used in the basic grant formula for county allocations also used to determine county eligibility for concentration grants?

A. Yes. The factors are the number of children, ages 5-17, in (1) families with incomes below the poverty level based on decennial census data; (2) families receiving AFDC payments above the current poverty level; (3) institutions for N or D children that are not State operated; and (4) foster homes supported with public funds.

Q7. If a county does not qualify for a concentration grant based on the basic grant county allocation formula data required by the statute, may an SEA determine that such a county is eligible because it meets the 6,500 or 15 percent criteria based on the data the SEA uses to determine basic grant allocations for the LEAs?

A. No. County eligibility is determined by the Secretary and may not be redetermined by an SEA.

Q8. How does the Secretary allocate concentration grant funds among eligible counties?

A. Each eligible county in the Nation receives a proportionate share of the concentration grant appropriation based on the product of:

- Its number of basic grant formula children for the preceding year in excess of 6,500, or the total number of basic grant formula children, if this number represents more than 15 percent of all children in the county, whichever of these numbers is greater.

- An amount that equals the current year basic grant for the county (prior to ratable reduction) divided by the number of basic grant formula children in the preceding year. These county amounts are ratably reduced to the amount appropriated for concentration grants.

Q9. **May an SEA adjust the county allocations computed by the Secretary?**

A. Adjustments may only be made by the SEA for the following reasons:

- To ratably increase eligible county amounts to equal the State minimum grant under §200.25(b)(3)(i).

- To proportionately reduce eligible county amounts to provide the reserved amount under §200.25(b)(1).

- To address special circumstances under §200.23(b)(2).

Q10. **Do all SEAs receive concentration grant funds?**

A. SEAs in the 50 States, the District of Columbia, and Puerto Rico receive concentration grant funds.

Q11. **When are SEAs notified of county amounts for concentration grants?**

A. The Secretary has set March 15 as the target date for announcing county allocations for basic grants and concentration grants.

Q12. **How does an SEA distribute each county's concentration grant funds among LEAs within the county?**

A. Each LEA that is eligible for concentration grant funds receives a proportionate share of the county concentration grant based on its number of basic grant formula children compared to the number for all eligible LEAs in the county.

Q13. **Which LEAs are eligible to receive concentration grants?**

A. The general rule is an LEA is eligible for a concentration grant if--

- The LEA is eligible for a basic grant;

- The LEA is located, in whole or in part, in a county eligible for a concentration grant; and

- The number of children counted in the allocation formula for the LEA's basic grant in the preceding year exceeds 6,500 or 15 percent of the total number of children in the LEA.

Q14. What are exceptions to the general rule under which an LEA may be eligible to receive concentration grant funds?

A. An LEA would be eligible under any of the following conditions:

- An LEA has a number of basic grant formula children in the preceding year that exceeds 6,500 or 15 percent of the total number of children, but it is otherwise ineligible because it is located in an ineligible county. The SEA may determine such LEAs to be eligible and reserve up to 2 percent of its concentration allocation to fund them.

- An LEA is located in an eligible county in which no LEA had basic grant formula children in the preceding year in excess of 6,500 or 15 percent. Such an LEA is eligible if its number or percentage of basic grant formula children for the preceding year exceeds the average number or percentage for the county.

- An LEA is located in a State that receives a minimum concentration grant and the SEA allocates concentration grant funds without regard to eligible counties. The LEA is eligible if its number or percentage of basic grant formula children exceeds the average number or percentage for the State.

Q15. Are SEAs required to use the same formula data to determine LEA eligibility and allocate funds for concentration grants as they use to allocate basic grant funds?

A. Yes. To determine LEA eligibility, SEAs are required to use the counts of basic grant formula children that they used to determine LEA basic grants for the preceding year. To allocate concentration grant funds among eligible LEAs, the SEAs are required to use the counts of formula children that are used to compute the current year's LEA basic grant allocations.

Q16. If an LEA overlaps county boundaries and one of the counties is eligible, how does the SEA determine the LEA's eligibility to receive concentration grant funds and the amount of such funds for the LEA?

A. The LEA's eligibility should be determined on the basis of its total number of formula children, including those in all counties in which the LEA is located. The LEA is eligible if the number exceeds 6,500 or 15 percent of all children in the LEA. If the eligible LEA is located in part in an eligible county, the LEA is entitled to a proportionate amount of the eligible county's allocation based only on the number of formula children in that county compared to the total number of formula children in all eligible LEAs in the county.

Q17. Is an SEA required to reserve 2 percent of its concentration allocation for eligible LEAs that are located in ineligible counties?

A. No. This is an SEA option. The SEA may choose to reserve 2 percent, an amount less than 2 percent, or no funds at all.

Q18. If an SEA reserves concentration funds, must it distribute the reserved amount among all eligible LEAs in the State that are located in ineligible counties?

A. No. The SEA may rank order these LEAs according to the number or percentage of basic grant formula children for the preceding year and distribute the reserved funds among the selected LEAs in proportion to their current year counts of basic grant formula children.

Q19. In a State that receives a minimum concentration grant, how does the SEA allocate concentration grant funds among LEAs in the State?

A. The SEA may choose either of the following options:

- The lump sum it receives to bring the State up to its minimum guaranteed allocation may be proportionately allocated among all eligible counties. Under this option, each eligible LEA in an eligible county would receive a proportionate amount of the total county concentration allocation based on its current year's count of basic grant formula children compared to other eligible LEAs in the county.

- The SEA may disregard the allocations for eligible counties in the State and allocate concentration grant funds to each LEA in which either the number or percentage of children counted for basic grants in the preceding year exceeds the average number or percentage of those children in LEAs in the State. Under this option, each such LEA would receive a proportionate amount of the State concentration grant based on its current year's count of basic grant formula children compared to the number in such other LEAs in the State.

Q20. Is there an LEA "hold harmless" allocation for concentration grant funds?

A. No. Neither the statute nor the regulations provide guaranteed minimum allocations for LEAs for concentration grant funds.

Q21. Since an SEA is required to include N or D children in the counts of formula children used to allocate basic grant funds and these same counts are used to allocate concentration grant funds, must an SEA allocate separately the proportionate share of an LEA's concentration grant funds for N or D children as is required for basic grants?

A. Yes. If an LEA is unwilling or unable to provide services to N or D children, the SEA is required to deduct the amount of funds allocated on behalf of N or D children from both basic grants and concentration grants.

Q22. Are concentration grants a separate program?

A. No. An LEA that receives concentration grant funds shall use those funds to carry out the same activities as those funded with basic grants and described in its approved Chapter 1 project application.

Q23. Must these funds be accounted for separately?

A. No. The LEA is not required to account for concentration grant funds separately from basic grant funds.

Q24. May an LEA carry over unobligated concentration grant funds for use in the succeeding year?

A. Yes. However, basic grant funds and concentration grant funds do not require separate identity at the LEA level. Thus, it is unlikely that Chapter 1 LEA program carryover funds would be identified as basic grant funds or concentration grant funds.

Q25. Is there a limitation on the amount of concentration grant funds that may be carried over?

A. The limitations on carryover funds in §200.46 apply to an LEA's total Chapter 1 LEA program allocation, i.e., basic grant funds and concentration grant funds.

Q26. Must an SEA reallocate concentration grant funds only to LEAs that are eligible to receive concentration grant funds?

A. No. It would not be possible for an SEA to separately identify the excess funds in an LEA that are available for reallocation as basic grant funds or concentration grant funds since separate accounting of these funds is not required. All excess Chapter 1 LEA program funds must be reallocated in accordance with §200.26.

CARRYOVER

Statutory Requirements

Section 1432(b) of Chapter 1 of Title I, ESEA and Section 412(b) of GEPA

Regulatory Requirements

Section 200.46 of Chapter 1 LEA Program Regulations and Sections 76.705 and 76.706 of the Education Department General Administrative Regulations (EDGAR)

Section 1432(a) of Chapter 1 provides a 15-month period during which Chapter 1 funds are available for obligation. Based on this language, Chapter 1 funds become available on July 1 preceding the beginning of the Federal fiscal year for which they are appropriated and remain available until September 30 of the subsequent year. If an LEA does not obligate all its allocation by the end of the fiscal year for which Congress appropriated the funds, it has authority under section 412(b) of GEPA to obligate the remaining funds, subject to the limitations in section 1432(b), during a carryover period of one additional year. Following is an example of the 27-month availability period for Chapter 1 funds.

Federal Fiscal Year 1989 Appropriation

		Number of Months
Year for which the funds were appropriated	July 1, 1989-September 30, 1990	15
Carryover period provided under section 412(b) of GEPA	October 1, 1990-September 30, 1991	12
		27

Q1. What are carryover funds?

A. Funds that are used during the final 12 months of their availability--the carryover period provided under section 412(b) of GEPA.

Q2. Under what program requirements must carryover funds be used?

A. Carryover funds must be used in accordance with the statute and regulations that are in effect for the carryover period--not the legislation that was in effect during the year for which the funds were appropriated.

Q3. Are there restrictions on the amount of Chapter 1 LEA program funds an LEA may carry over?

A. Yes. Carryover amounts are limited to--

- No more than 25 percent of the total amount allocated to the LEA, i.e., basic grant funds and concentration grant funds, from the Federal FY 1989 appropriation (allocated to the LEA for the period July 1, 1989-September 30, 1990); and

- No more than 15 percent of the funds allocated to the LEA, i.e., basic grant funds and concentration grant funds, from the Federal FY 1990 appropriation (allocated to the LEA for the period July 1, 1990-September 30, 1991) and each subsequent year's appropriation.

Q4. Is the maximum amount an LEA may carry over to the subsequent year determined by applying the percentage limitation to the total amount of Chapter 1 LEA program funds available to the LEA for the current year?

A. No. The percentage limitations must be applied to only the amount allocated to the LEA for the current year for basic grant funds and concentration grant funds, not including carryover funds from the preceding year, excess funds that were reallocated to the LEA by the SEA in accordance with §200.26, capital expense funds under §200.57, or program improvement funds under §200.37(b)(2).

Q5. If a State's fiscal year is not the same as the Federal fiscal year and ends June 30 rather than September 30, may the SEA apply the percentage limitations on carryover funds as of June 30?

A. No. An SEA may establish a project year that is the same as its fiscal year. For example, the SEA may establish a project year that begins on July 1 and ends on June 30 of the following year. However, LEAs are entitled to access to the Chapter 1 funds for the full 15-month period (until September 30) before the limitations on carryover funds may be applied. That is, the SEA may not apply the limitations on carryover amounts until after September 30 even if the SEA approves projects for a period from July 1 through June 30. The SEA should establish controls to ensure that, after September 30 of each year, LEAs are not allowed to use any prior year's funds that exceed the carryover limitations in §200.46. If an LEA's project includes both prior year and current year funds, charges should be made against prior year funds first to reduce any amounts that will be in excess of the limitations on carryover funds. The SEA or LEA must continue to account for funds by grant year.

Q6. May the SEA make an exception to the percentage limitations on carryover funds?

A. Yes. Section 1432(b) of Chapter 1 provides that an SEA may grant an LEA a one-time waiver of the percentage limitations on carryover funds if the SEA determines that the request is reasonable and necessary. In addition, the SEA may grant a waiver in any fiscal year if a supplemental appropriation for Chapter 1 becomes available.

Q7. **Does the one-time waiver apply to the three-year application period or the entire period of time for which the program is authorized?**

A. A waiver may be granted by the SEA to an LEA only once during the current authorization of the program.

Q8. **Do the percentage limitations on carryover funds apply to all LEAs?**

A. No. They do not apply to an LEA that receives an allocation less than $50,000 for the Chapter 1 LEA program, i.e., basic grant funds and concentration grant funds.

Q9. **May State program improvement funds under section 1405 and the capital expenses funds under section 1017(d) be carried over?**

A. Yes.

Q10. **Is there a percentage limitation on the amount of State program improvement and capital expenses funds an LEA may carry over?**

A. No.

Q11. **May the funds allocated for the Chapter 1 State agency programs for migratory, handicapped, and N or D children be carried over?**

A. Yes. The State agencies receiving these funds may carry over unexpended funds for use during the subsequent year and the percentage limitations on carryover funds in §200.46 are not applicable to these programs.

Q12. **May State administration funds be carried over?**

A. Yes. SEAs may carry these funds over and the percentage limitations in §200.46 are not applicable.

REALLOCATION

Statutory Requirement

Section 1403 of Chapter 1 of Title I, ESEA

Regulatory Requirement

Section 200.26

In order to permit the most effective use of the appropriation for the Chapter 1 LEA program, SEAs are required to identify annually those LEAs in the State with excess Chapter 1 allocations and to reallocate the excess funds to other eligible LEAs. The SEAs must use reallocation as a remedy to redress inequities in Chapter 1 funding caused by the statutory allocation formula.

Q1. What steps must the SEA follow to reallocate Chapter 1 funds?

A. The SEA must develop procedures to:

- Identify excess funds;
- Determine which LEAs are eligible to receive reallocated funds; and
- Select from the eligible LEAs those that have the greatest need.

Q2. What are excess funds?

A. Excess Chapter 1 funds are funds--

- From an LEA that is not participating in the Chapter 1 LEA program;
- That were recovered by the SEA from an LEA that had its allocation reduced because it failed to meet the maintenance of effort requirements in §200.41;
- From an LEA that has carryover funds that exceed the percentage limitations in §200.46 or has excess funds for other reasons; or
- That were recovered by the SEA after determining that the LEA had failed to spend the funds in accordance with Chapter 1 requirements.

Q3. If an LEA does not submit an application for Chapter 1 funds, may an SEA reallocate the LEA's entire Chapter 1 allocation, or must the LEA be

allowed to retain the maximum allowed carryover for the succeeding school year?

A. The SEA may reallocate the LEA's entire Chapter 1 allocation. The LEA, however, should be given every opportunity to submit an application and should be aware of the consequences if the application is not submitted to the SEA by the required due date.

Q4. **May an SEA reallocate the portion of a participating LEA's allocation for which it did not apply by the date specified by the SEA?**

A. The SEA may reallocate any portion of these funds that would exceed the amount allowed in §200.46 for carryover to the succeeding year.

Q5. **There are no limitations on carryover funds for LEAs with allocations of $50,000 or less. If these LEAs have excess funds for the current school year, may the SEA reallocate those funds or must it give these LEAs an opportunity to use the funds in the carryover year?**

A. If these LEAs do not submit applications to participate in the program by the date specified by the SEA, the SEA may reallocate the funds allocated to these LEAs for the current school year. The SEA also has authority to determine that a participating LEA has excess funds and the SEA may reallocate such funds during the current year.

Q6. **May an SEA reallocate the funds allocated to an LEA on behalf of N or D children if neither that LEA nor any other agency is able or willing to provide services to those children?**

A. No. These funds are not available for reallocation.

Q7. **Which LEAs are eligible to receive reallocated funds?**

A. An SEA may reallocate excess Chapter 1 funds only to LEAs with the greatest need for those funds because of inequities in, or mitigating hardships caused by, application of the statutory allocation formula.

Q8. **What are factors that may cause inequities in an LEA's allocation?**

A. These factors include--

- An increase since the most recent decennial census, caused by population shifts or changing economic conditions, in the number of children from low-income families. For example, in LEAs where there have been population shifts or changing economic circumstances that resulted in increased numbers of poverty families since the 1980 census, inequities occur in funding because the LEAs' allocations are based on the statutory formula primarily comprised of poverty data from the 1980 census;

- o Data used in the allocation formula that are not representative of the current number of N or D children in local institutions. The N or D formula is based on data from the previous year's Occober caseload, and if there has been an increase in the number of N or D children since that time, there is an inequity in funding; or

- o Other circumstances in which the statutory formula fails to reflect accurately the number of low-income children.

Q9. **How may an SEA determine if there is an inequity in an LEA's funding?**

A. Evidence of increases or redistribution of the poverty population may be obtained by comparing 1979 or 1980 data to comparable data for the present based on (1) the number of children receiving free and reduced-price school lunches; (2) the number of children in families receiving AFDC payments; or (3) any other available data on numbers of children from low-income families.

Q10. **May the SEA consider as eligible for reallocation funds all LEAs that can document increases in numbers of children from low-income families since 1979 or 1980?**

A. Yes. It may, however, reallocate those funds only to those LEAs with the greatest need.

Q11. **May the SEA require LEAs to furnish the information necessary to document the increase in the number of children from poor families?**

A. Yes. This may be included as a requirement in the LEA's application for reallocation funds.

Q12. **In some States, LEAs are required to retain free lunch and AFDC records for only five years. If 1980 data are not available, may the SEA reallocate funds to an LEA that is able to document an increase only during the past five years in children from poor families?**

A. Reallocation funds must be used to redress inequities in funding caused by the allocation formula. Unless the data for 1979 or 1980 have been retained, a determination that there has been an increase in poverty that results in an inequity in funding cannot be made.

Q13. **If free lunch or AFDC records for 1979 or 1980 are not available in the LEA, what should the LEA do?**

A. If the records are no longer available in the government agencies administering the free lunch and AFDC programs, the LEA should request the information from archives.

Q14. What criteria should the SEA use to select LEAs with the greatest need?

A. LEAs meeting all the following criteria may be considered those in the greatest need:

- o LEAs having the highest increase in numbers or percentages of children from poor families. For example, an SEA may restrict reallocation funds to only those LEAs with an increase of more than 100 children.

- o LEAs with less than the maximum allowed carryover funds from the previous school year.

- o LEAs that are able to justify the extent of their needs for additional funds to provide Chapter 1 services to address unmet needs of eligible Chapter 1 children, such as the number of unserved eligible children in participating schools, the number of eligible schools not being served, and the additional needs of participating children that cannot be met because of insufficient funds.

Q15. After the SEA selects the LEAs with the greatest need, how are the reallocation funds distributed among these LEAs? May this distribution be done on a formula basis?

A. The SEA must treat these funds as discretionary funds and fund each LEA's request taking into consideration the amount of funds available and the LEA's justification of cost for activities and the budgets proposed by the LEA to address the unmet needs of Chapter 1 children.

Q16. May an SEA reallocate funds to LEAs for any reason other than to address inequities caused by the formula?

A. No. The SEA may not reallocate Chapter 1 funds to any LEA for any reason unless the LEA meets the eligibility criteria to receive reallocation funds. The SEA may not reallocate funds to: LEAs experiencing reduced allocations because of fewer formula children; reduce LEAs' general revenue budgets; fund special programs the SEA holds as a high priority; or ratably increase all LEAs' allocations.

Q17. May SEAs require LEAs to use reallocation funds for special programs the SEA holds as a high priority?

A. No. LEAs must be allowed to use these funds to meet educational needs identified in accordance with §200.31.

Q18. What would be appropriate timelines for reallocation?

A. The SEA is required to reallocate on a timely basis so that excess funds are made available to other LEAs for use during the year for which the funds were appropriated. Following is an example of a timeline that could be established:

Timeline	Funds to be Reallocated
October 30	All carryover funds from the preceding year that exceeded the percentage limitations in §200.46 as of October 1. All current year funds for which LEAs have not submitted applications to participate in the Chapter 1 program. Current year funds the SEA has withheld from LEAs because of their failure to meet maintenance of effort requirements in §200.41. Any other excess funds identified by the SEA.
January 30	All unbudgeted current year funds that exceed the amounts allowed in §200.46 for carryover into the succeeding fiscal year. Funds that have been budgeted by LEAs but the SEA has knowledge that they will not be used. (All these funds that exceed the amounts allowed for carryover into the succeeding fiscal year should be reallocated unless LEAs revise their applications to include new activities.)

In order to reallocate excess funds according to these timelines, it would be necessary to establish additional timelines for interim and final obligation and expenditure reports, submission of applications for reallocation funds, etc.

USES OF FUNDS

Statutory Requirement

Section 1011 of Chapter 1 of Title I, ESEA

Regulatory Requirements

Sections 200.4 and 200.40-200.45

Section 1011(a) of Chapter 1 and §200.4(a) and (c) of the regulations provide that an LEA may use Chapter 1 funds for projects designed to provide supplemental services to meet the special educational needs of educationally deprived children at the preschool, elementary, and secondary school levels. LEAs are encouraged to consider year-round services and activities, including intensive summer school programs. Chapter 1 funds may be used only to pay for authorized activities to meet the special needs of educationally deprived children. The authorized activities include the following:

- Acquisition of equipment and instructional materials.
- Acquisition of books and school library resources.
- Employment of special instructional personnel, school counselors, and other pupil services personnel.
- Employment and training of education aides.
- Bonus payments to teachers for services in schools serving project areas.
- Training of teachers, librarians, other instructional and pupil services personnel, and, as appropriate, early childhood education professionals.
- Construction, if necessary, of school facilities.
- Parental involvement activities.
- Planning for and evaluation of Chapter 1 projects.
- Other allowable activities.

Section 200.40 of the regulations prohibits the use of Chapter 1 funds as general aid to benefit an entire school district or, except in schoolwide projects, all children in a school, grade, or class. An LEA may use Chapter 1 funds only for projects that are designed and implemented to meet the special educational needs of educationally deprived children who are properly identified and selected for participation in the program, and that are included in the LEA's application that has been approved by the SEA.

Q1. May Chapter 1 funds be used to pay for employee benefits such as pension plans, unemployment insurance coverage, health insurance, severance pay, and life insurance?

A. Yes. Employers' contributions for employee benefits such as these are an allowable use of Chapter 1 funds provided the benefits are granted under approved plans and the costs are distributed equitably to the Chapter 1 grant and to other activities. Additional information on approaches for equitably distributing costs for employee benefits are available from ED.

Q2. May Chapter 1 funds be used to pay the salary costs for employees during periods of authorized absences such as annual leave, sick leave, and sabbatical leave?

A. Yes. Employee benefits in the form of compensation paid during reasonable authorized absences from the job are an allowable use of Chapter 1 funds if the benefits are provided under an established leave system and the costs are equitably allocated to all related activities, including the Chapter 1 program.

Q3. What records are necessary to support the salary costs charged to Chapter 1 funds for an employee who works on Chapter 1 duties but also has other program responsibilities?

A. If the State applies Part 80 of EDGAR, which references the cost principles in Office of Management and Budget (OMB) Circular A-87, the grantee must maintain appropriate time distribution records. Actual costs charged to each program must be based on the employee's time distribution records. If the State applies its own procedures rather than the procedures in 34 CFR Part 80, the records must meet the requirements in §200.5(a)(4) of the Chapter 1 regulations. The method used must produce an equitable distribution of time and effort. Records must be retained for five years. For instructional staff, including teachers and instructional aides, class schedules that specify the time that such staff members devote to Chapter 1 activities meet the requirement for time distribution records as long as there is corroborating evidence that the staff members actually carried out the schedules.

Q4. May Chapter 1 funds be used to pay the cost of renting or leasing privately owned facilities for instructional purposes or office space?

A. The cost to rent or lease space in privately owned buildings is allowable if the space is necessary for the success of the project and space in publicly owned buildings is not available to the grantee.

Q5. Are maintenance and operation costs such as janitorial services and utilities costs allowable charges?

A. Maintenance and operation costs are allowable charges to Chapter 1 to the extent that the costs are not otherwise included in rent or other charges for space, are reasonable and necessary for the success of the project, and the costs are distributed on an equitable basis.

Q6. May Chapter 1 funds be used to construct school facilities?

A. Yes, when necessary to the success of the Chapter 1 program. Section 1011(a)(2) of Chapter 1 and §200.4(c) of the regulations specifically authorize the use of Chapter 1 funds, where necessary, to construct school facilities. The LEA must demonstrate in its application that the proposed construction is essential to the success of the Chapter 1 project, that it has made every effort to consider other funds to pay for the construction, and that there is no alternative space that meets the needs of the project.

Q7. **May Chapter 1 funds be used to provide training for instructional and pupil services personnel not paid with Chapter 1 funds?**

A. The cost of training personnel not paid with Chapter 1 funds is an allowable charge if the training is specifically related to the Chapter 1 program and designed to meet the specific educational needs of participating educationally deprived children; is not designed to meet the general needs of the LEA, an entire school, or all children in a school or class; and supplements, not supplants, State and local training.

Q8. **May Chapter 1 funds be used to train personnel in preparation for implementing a program in a subsequent school year?**

A. Yes. For example, in preparation for implementing a Chapter 1 project that addresses more advanced skills in reading during the next school year, an LEA may use current Chapter 1 funds to implement a training program for Chapter 1 paid staff as well as regular classroom teachers to be served by the new project during the next school year.

Q9. **May equipment be purchased with Chapter 1 funds?**

A. Section 200.4(c) of the regulations and section 1011(a)(2) of Chapter 1 permit the use of Chapter 1 funds to acquire equipment. An LEA must determine that (1) the equipment is reasonable and necessary to effectively operate its Chapter 1 program; (2) existing equipment it already has will not be sufficient; and (3) the costs are reasonable.

Q10. **What procedures govern disposition of equipment purchased with Chapter 1 funds?**

A. A State's procedures concerning disposition of equipment govern the disposition of Chapter 1 equipment, regardless of whether the State is following Part 80 of EDGAR or applying its own procedures for fiscal control and fund accountability under §200.5(a)(4). Section 80.32(b) of EDGAR requires that a State will dispose of equipment "in accordance with State laws and procedures." However, the State may follow, as its State procedures, the disposition provisions in §80.32(e) of EDGAR.

Q11. **When an LEA recovers funds from the sale of equipment or real property purchased with Chapter 1 funds, may these funds be retained by the LEA?**

A. As stated in the answer to Q10., a State's procedures govern the disposition of Chapter 1 equipment and real property. If a State has decided to apply the provision in §80.32(e) of EDGAR as its State procedures, an LEA may retain, sell, or otherwise dispose of equipment with a current per unit fair-market value of less than $5,000 with no further obligation to the Federal Government. If the equipment has a per unit value of more than $5,000, §80.32(e)(2) requires the LEA to compensate the Federal Government. Similarly, §80.31(c) requires an LEA to compensate the Federal Government if it disposes of real property purchased in whole or in part with Chapter 1 funds.

A State may also adopt other procedures for disposing of Chapter 1 equipment and property. For example, a State may establish a threshold lower than the $5,000 amount established in §80.32(e). In addition, instead of returning the proceeds to the Federal Government under §§80.31(c) and 80.32(e)(2), a State may permit LEAs to expend those proceeds in the Chapter 1 program.

Q12. **What happens to equipment purchased with Chapter 1 funds when it is no longer needed for Chapter 1 activities?**

A. If a State applies Part 80 of EDGAR, 34 CFR 80.32(c)(1) provides that when equipment is no longer needed for its original purpose, it may be used for activities currently or previously funded by other Federal programs. If there are no such current activities, the LEA should apply the State's disposition procedures.

Q13. **What options does an LEA have to make maximum use of equipment purchased, in whole or in part, with Chapter 1 funds?**

A. An LEA has several options to increase flexibility in using Chapter 1 equipment. When an LEA purchases equipment with Chapter 1 funds, for example, it may share the cost with other Federal, State, or local programs that will also make use of the equipment on a proportional basis. Likewise, an LEA that wishes to use Chapter 1 equipment in non-Chapter 1 activities may pay a reasonable user fee to the Chapter 1 program for the portion of time the equipment is used in non-Chapter 1 activities. Further, an LEA may use Chapter 1 equipment in non-Chapter 1 activities without paying a user fee or sharing costs in accordance with the standards described in Question 14 below. Additionally, an LEA may take into consideration when it decides its equipment needs under Chapter 1 whether other equipment--e.g., LEA-funded adult education equipment used at night--would be available for Chapter 1 use during the day.

Q14. **Are there circumstances under which Chapter 1 equipment may be used in non-Chapter 1 activities without paying a user fee or sharing costs?**

A. Yes, subject to the standards described below. Under section 1011(a) of Chapter 1, an LEA may use Chapter 1 funds only for programs and projects designed to meet the special educational needs of educationally deprived children. Any equipment purchased with Chapter 1 funds must be reasonable and necessary to implement a properly designed project for those children. The Department recognizes, however, that under some circumstances, equipment purchased as part of a properly designed Chapter 1 project may, without constituting an improper expenditure, be used on a less than full-time basis. If that equipment could be made available for other educational uses without interfering with its use in the Chapter 1 project or significantly shortening its useful life, the Department would have no objection to the non-Chapter 1 use, given the fact that it would otherwise be idle.

This guidance is consistent with 34 CFR 80.32(c), which allows equipment to be made available for use on other projects or programs currently or previously supported by the Federal Government, "providing such use will not interfere with the work on the projects or program for which it was originally acquired." The guidance is also consistent with parallel flexibility afforded to institutions of higher education, hospitals, and nonprofit organizations in 34 CFR 74.137, which permits shared use of equipment purchased with Federal funds in non-federally funded, as well as federally funded, projects. Because a State may adopt its own procedures for use of Chapter 1 equipment (see §§200.5(a)(4), 80.32(b)), it could adopt the flexibility in §§80.32(c) or 74.137, even though those provisions do not otherwise apply to the Chapter 1 program. The guidance set forth below assists in ensuring that limited use of Chapter 1 equipment in non-Chapter 1 activities does not interfere with the Chapter 1 program and is consistent with the Chapter 1 statute and regulations.

An LEA that decides to use Chapter 1 equipment in non-Chapter 1 activities on a part-time basis must do so in a manner that protects the integrity of the equipment as a Chapter 1 expenditure. Accordingly, the LEA must ensure and document that the Chapter 1 equipment is part of a Chapter 1 project that has been properly designed to meet the special educational needs of educationally deprived children; that the equipment purchased with Chapter 1 funds is reasonable and necessary to operate the LEA's Chapter 1 project, without regard to any use in non-Chapter 1 activities; that the project has been designed to make maximum appropriate use of the equipment for Chapter 1 purposes; and that the use of the equipment in non-Chapter 1 activities does not decrease the quality or effectiveness of the Chapter 1 services provided to Chapter 1 children with the equipment, increase the cost of using the equipment for providing those services, or result in the exclusion of Chapter 1 children who otherwise would have been able to use the equipment.

LEAs should be judicious in applying these standards. The Secretary will presume, absent actual evidence to the contrary, that the standards have been met and that use of Chapter 1 equipment in non-Chapter 1 activities is proper if that use does not exceed 10 percent of the time the equipment is used in Chapter 1 activities. However, use above that amount in non-Chapter 1 activities is not necessarily improper if the standards are met on a case-by-case basis.

The following examples illustrate some situations in which Chapter 1 equipment may be used in non-Chapter 1 activities:

1. Computers purchased with Chapter 1 funds are used full-time during the school day but are idle during evening hours and would be beneficial to adult education classes that meet twice a week. The use in the adult education classes would not be extensive and therefore would not significantly shorten the useful life of the equipment. Under these circumstances, the Chapter 1 computers may be used for the adult education classes.

2. Chapter 1 computers that are part of a properly designed Chapter 1 project are being used full-time except for one

period each school day. The proper amount of computer equipment was purchased for the Chapter 1 project and the Chapter 1 project cannot be redesigned effectively to use the computers in every period. Under these circumstances, the Chapter 1 computers may be used, for example, for State or locally funded compensatory education activities during the period they are idle.

3. Ten listening centers were purchased with Chapter 1 funds and are used regularly but not continuously in the Chapter 1 project. The Chapter 1 project cannot be designed effectively to use the centers more frequently. The listening centers are used in an extracurricular foreign language program for periods of time averaging 10 percent or less of the time devoted to Chapter 1. If the useful life of the centers is not significantly reduced, the centers may be used in this matter.

The above examples are predicated on the assumption that the equipment was a reasonable and necessary part of a properly designed Chapter 1 project. An LEA's project would be improperly designed if, for example, excess Chapter 1 equipment was purchased so that it could be available for non-Chapter 1 use, or if non-Chapter 1 use was considered in the decision to purchase Chapter 1 equipment. Essentially, purchase of Chapter 1 equipment must be made solely on the basis of the needs of the Chapter 1 program, and non-Chapter 1 use of that equipment may in no way harm the LEA's Chapter 1 program. To ensure proper use of Chapter 1 equipment, the SEA should review, approve, and monitor LEA use of Chapter 1 equipment in non-Chapter 1 activities.

Q15. May Chapter 1 funds be used to pay for travel and conference costs?

A. The costs for staff travel and conferences are allowable if the travel and conferences are specifically related to the Chapter 1 program and not to the general needs of the LEA and are reasonable and necessary.

Innovation Projects

The Chapter 1 statute authorizes an LEA, with the approal of the SEA, to use up to and including 5 percent of the funds it receives under §200.22 through §200.26 for conducting innovation projects. The purpose of innovation projects is to promote quality in the Chapter 1 LEA program.

Q16. What is an innovation project?

A. Innovation projects may include only the following:

- Continuation of services to children who received Chapter 1 services in any preceding year for a period sufficient to maintain progress made during their participation in the program (notwithstanding §200.31(a) of the regulations).
- Provision of continued services, for a period not to exceed two additional years, to children participating in a Chapter 1 project who are transferred to ineligible areas or schools as

part of a desegregation plan (notwithstanding §200.31(c)(1) of the regulations).

- Incentive payments to schools that have demonstrated significant progress and success in attaining the goals of Chapter 1.
- Training of Chapter 1 and non-Chapter 1 paid teachers and librarians with respect to the special educational needs of eligible children and integration of activities under Chapter 1 into regular classroom programs.
- Programs to encourage innovative approaches to parental involvement or rewards to or expansion of exemplary parental involvement programs.
- Encouraging the involvement of community and private sector resources (including fiscal resources) in meeting the needs of eligible children.
- Assistance to schools identified under section 1021(b) of Chapter 1 (school program improvement).

Q17. **Must the LEA seek approval from the SEA to use Chapter 1 funds for innovation projects?**

A. Yes. The LEA must include in its application for Chapter 1 funds a description of any innovation projects it proposes to conduct.

Q18. **Does the 5 percent limitation on innovation projects apply only to funds expended on innovation project activities?**

A. The 5 percent limit applies only to activities an LEA conducts as innovation projects. The limitation does not apply to similar activities that may otherwise be authorized by Chapter 1. For example, an LEA may use 5 percent of its Chapter 1 funds for parental involvement activities as an innovation project in addition to other parental involvement activities it conducts with Chapter 1 funds that are not included as an innovation project.

Q19. **Do all Chapter 1 requirements apply to innovation projects?**

A. Yes. Except as provided in §200.4(b)(4)(i)-(ii), all Chapter 1 program requirements apply to innovation projects that LEAs conduct.

Q20. **May an LEA use funds under an innovation project to reward a school that, because of the success of the Chapter 1 program, the school no longer has children participating in the program?**

A. No. As an authorized innovation project, an LEA may make incentive payments to schools that have demonstrated significant progress and success in attaining the goals of Chapter 1. However, those schools must still have children participating in the Chapter 1 program.

ASSURANCES AND APPLICATIONS

Statutory Requirement

Section 1012 of Chapter 1 of Title I, ESEA

Regulatory Requirements

Sections 200.10 and 200.20-200.21

State Educational Agency Assurances

An SEA must submit the assurances in section 1012(a) of Chapter 1 and §200.10 of the regulations to the Secretary once during the current authorization.

State assurances cover the SEA's responsibilities for--

- Fiscal control and fund accounting procedures;
- Evaluation and school program improvement;
- State program improvement activities; and
- LEA compliance with statutory and regulatory provisions.

Q1. What documentation should an SEA have available to demonstrate that it has carried out activities to support its assurances?

A. SEA documentation should include, but need not be limited to, the following:

- Fiscal records that--
  a. Are up-to-date and reflect sound accounting principles;
  b. Indicate disbursements of Chapter 1 funds on a separate basis from other funds; and
  c. Meet the recordkeeping requirements in section 437(a) of GEPA.
- The State's written administrative and fiscal procedures, if Part 80 of EDGAR is not adopted.
- Records to show the members and activities of the committee of practitioners;
- Time distribution records to support the distribution of costs for staff whose salaries come from more than one source.
- Maintenance of effort data for each LEA.

- Evaluation reports for LEAs, which must be submitted once every three years.

- Documentation that the SEA has made public the results of its State evaluation.

- A State program improvement plan, which incorporates requirements in section 1020 of Chapter 1 and §200.37 of the regulations; school program improvement plans submitted by LEAs; and joint plans, when required.

- An approved application for each LEA that is implementing a Chapter 1 program, including approved annual updates for multi-year applications and amendments that cover changes in LEA programs.

- Information that promotes and/or documents compliance such as monitoring standards, procedures, activities, and results; policy guidance; State regulations; standards, procedures, and guidelines for approving local applications; and audit reports.

Local Applications

An LEA may apply for a Chapter 1 subgrant if it is located, in whole or in part, in a county where at least 10 children counted under section 1005(c) of Chapter 1 reside.

Q2. **May two or more LEAs enter into a cooperative arrangement to apply for a Chapter 1 subgrant?**

A. Yes. LEAs may join in a cooperative agreement to apply for a subgrant. The LEAs may designate one of the joining agencies to administer the program, or if there are regional consortia authorized under State law that meet the definition of an LEA, the regional agency may administer the program.

Q3. **Who designs the LEA application form? What is the maximum project period that an application may cover?**

A. Each SEA designs an application form that the LEAs in that State use to apply for a subgrant. An SEA may choose to develop a multi-year application form that covers a maximum of three years. In this case, LEAs must submit annual updates. An SEA has the option, subject to State rulemaking requirements, of developing an annual or two-year application form, which includes in full the requirements in section 1012(b) and (c) of Chapter 1 and §200.20(a)-(c) of the regulations.

Q4. **What must be included in an LEA application before it can be approved by the SEA?**

A. An application must include, but is not limited to, the following:

- A description (meaning a concise explanation, not an extended narrative) of the procedures for conducting an annual needs assessment.
- A rank-ordered list of eligible school attendance areas that identifies project areas, the type of low-income data by which they were selected, the districtwide percentage or average number of children from low-income families, and explanatory information on schools or school attendance areas selected or not selected under special rules.
- A description of the project that provides enough information about the proposed activities for the SEA to determine if the plan for the program is in compliance.
- A budget that separates proposed expenditures for services for public and private school children.
- A description of desired outcomes for children in the project, in terms of basic and more advanced skills that all children are expected to master, and how the LEA will measure substantial progress toward meeting the desired outcomes.
- A description of services to be provided to private school children.
- A description of services to be provided to local N or D children.
- A description of innovation projects, if any are planned.
- Maintenance of effort data (if not available to the SEA through another means).
- If appropriate, the assurance concerning comparability of services in §200.43(c)(1)(i). An LEA has the option of implementing other measures for determining compliance according to §200.43(c)(1)(ii)(A) and (B) instead of filing a written assurance with the SEA.
- The assurances required under section 436(b)(2) and (3) of GEPA relating to fiscal control and fund accounting procedures.
- Local assurances required in §200.20(a)(8)-(10) of the regulations.

Q5. **What are the desired outcomes that must be included in the application?**

A. An LEA's application must include desired outcomes for eligible children, in terms of basic and more advanced skills that all children are expected to master in each instructional area included in the Chapter 1 program, which will be used as the basis for evaluating the program. The desired outcomes are the goals an LEA sets to help children succeed in the regular school program, attain grade level proficiency, and improve achievement in basic and more advanced skills. At a minimum, the desired outcomes must include aggregate performance. LEAs are strongly encouraged to include other desired outcomes in basic and more advanced skills that are more directly related to their Chapter 1 program. LEAs may choose to measure progress toward these goals using a variety of indicators such as improved performance in the regular program, fewer retentions in grade, or lower dropout rates. Desired outcomes must be stated in measurable terms. (For a more extensive discussion, see the Program Improvement section of this manual.)

Q6. **What must be included in annual updates for LEAs that submit multi-year applications?**

A. Annual updates must include, but are not limited to, the following:

- o A rank-ordered list of eligible school attendance areas that identifies project areas, the type of low-income data by which they were selected, the districtwide percentage or average number of children from low-income families, and explanatory information on schools or school attendance areas selected or not selected under special rules.

- o Maintenance of effort data (if not otherwise available to the SEA).

- o A budget that separates proposed expenditures for public and private school children.

- o If there are substantial changes in the number or needs of the children to be served or the services to be provided, a description of the changes.

Q7. **How much of a change in the number or needs of children being served constitutes a change substantial enough to require an amendment to the application?**

A. Programmatic changes resulting from a change in the number or needs of participating children or both must be reported to the SEA in the form of an amendment. There is no quantitative figure, however, that determines the point at which this action must be taken. It is the LEA's responsibility to recognize the need for an amendment when the program approved in the application undergoes modifications. The amendment must be developed in consultation with parents and teachers as in the development of the original application.

Q8. **May an SEA give conditional approval to an LEA's application that does not meet all of the requirements of the statute and regulations?**

A. No.

Q9. **Who must be involved in the development of an application?**

A. An LEA's application must be developed in consultation with parents and teachers of participating children. The LEA may also consult with principals, regular teachers of Chapter 1 students, early childhood specialists, librarians, and pupil services personnel.

Local Assurances

Q10. What assurances must be provided by an LEA in the application?

A. Section 200.20(a)(10) of the regulations requires an LEA's application to include assurances that the LEA's projects--

- Are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served;
- Are designed and implemented in consultation with teachers (including early childhood professionals, pupil services personnel, and librarians, if appropriate);
- Provide for parental involvement as required by §200.34 of the regulations;
- Provide for the allocation of time and resources for frequent and regular coordination between Chapter 1 staff and the regular program staff; and
- Provide maximum coordination between Chapter 1 and programs to address children's handicapping conditions or limited English proficiency (LEP).

Under §200.20(a)(10)(ii), an SEA may request additional information to ensure compliance with the required assurances. For example, an SEA may ask an LEA to describe how parents were involved in the development of the program that is proposed in the application in support of the parental involvement assurance.

Q11. Are assurances necessary if the activity is described elsewhere in the application?

A. Yes. The regulations state that the required assurances must be included in the application. Further description of activities may be desirable but should not be used in place of the list of assurances required by the regulations.

Q12. When should consultation occur?

A. Consultation should occur during all aspects of the Chapter 1 program, including selecting the procedures for needs assessment, establishing desired outcomes, designing program activities, and evaluating effectiveness. The consultation process should be ongoing, timely, and systematic so that the project has the benefit of multiple perspectives and reflects coordination among the various interests.

Q12a. When would it be appropriate to include early childhood professionals, pupil services personnel, and librarians in designing and implementing the Chapter 1 program?

A. Personnel who will participate in a program component or who will serve in an advisory capacity should be included in designing the program. For example, most Chapter 1 projects have reading as an instructional area; therefore, librarians who have expertise on books and materials appropriate for various reading levels can provide helpful advice in planning and implementing the reading component. For Chapter 1 projects that include a preschool program, early childhood professionals can contribute essential information on the development and needs of preschool children. Projects that include activities to raise the self-esteem or counsel students should involve pupil services personnel in planning as well as implementing those activities.

Q13. What are some examples of ways an LEA may allocate time and resources for effective coordination between Chapter 1 staff and the regular program staff?

A. Section 200.20(a)(10)(D) of the Chapter 1 regulations requires that an LEA include in its application an assurance that it will allocate time and resources for frequent and regular coordination between Chapter 1 staff and regular staff to ensure that both Chapter 1 and regular instructional programs meet the special educational needs of Chapter 1 children. This coordination should be a two-way street. That is, while the Chapter 1 program should be structured in a way that does not detract from and in fact fits smoothly into the regular program, the LEA should also examine which aspects of the regular program may be facilitating or frustrating the success of Chapter 1 children. Examples of time and resources that an LEA can provide are as follows:

- Substitutes for Chapter 1 personnel and regular program personnel to free them to meet to coordinate objectives and lesson plans.
- Parent conferences that include Chapter 1 personnel in addition to regular staff.
- Participation by Chapter 1 teachers in district curriculum committees or textbook selection committees.
- Involvement of regular teachers in the design of the Chapter 1 program.

Q14. What are some examples of coordination between Chapter 1 and programs that address children's handicapping conditions or LEP?

A. This type of coordination can be accomplished through the following types of activities:

- Team meetings between personnel from Chapter 1, special education, and LEP programs can be arranged to compare objectives and plan activities.
- Needs assessment information can be shared among Chapter 1, special education, and LEP programs, which will enable an LEA to better meet the needs of all children with special learning needs.

- Schoolwide projects offer the opportunity to develop enhanced capacity in teacher training, program offerings, and curriculum development.

- Special teachers can be utilized in a variety of capacities. For example, there is no prohibition against special education and LEP teachers working with Chapter 1 students, so long as salaries are appropriately prorated among the funding sources. When school districts prorate personnel costs among funding sources, however, it is important for personnel to keep time distribution records.

- Special education and LEP teachers working with eligible Chapter 1 children may participate in Chapter 1 inservice training programs that are designed for Chapter 1 purposes. Likewise, special education and LEP personnel may have expertise in teaching educationally disadvantaged children that could be shared with Chapter 1 personnel in training programs.

GENERAL EDUCATION PROVISIONS ACT

Statutory Requirement

Section 1438 of Chapter 1 of Title I, ESEA

The General Education Provisions Act (GEPA) is a law that contains general requirements that apply to most programs administered by ED. Section 1438 of Chapter 1 makes the provisions of GEPA apply to Chapter 1 with the exception of the following sections that are superseded by specific sections of Chapter 1:

- Section 408(a)(1) of GEPA superseded by section 1431 (Federal Regulations).
- Section 426(a) of GEPA superseded by section 1437 (Appropriations for Evaluation and Technical Assistance).
- Section 427 of GEPA superseded by section 1016 (Parental Involvement).
- Section 430 of GEPA superseded by section 1012 (Basic Programs--Assurances and Applications).
- Section 455 of GEPA superseded by section 1433 (Withholding of Payments).
- Section 458 of GEPA superseded by section 1434 (Judicial Review) with respect to judicial review of withholding of payments.

In addition, under the exclusion rule, sections 434, 435, and 436 of GEPA also do not apply to Chapter 1 except for the following sections that relate to fiscal control and fund accounting procedures:

- Section 434(a)(2).
- Section 435(b)(2) and (5).
- Section 436(b)(2) and (3).

Q1. **What is the difference between GEPA and EDGAR?**

A. GEPA is a law; EDGAR is a set of administrative regulations.

GRANTBACKS

Statutory Requirement

Section 459 of GEPA (NOTE: With respect to final audit determinations received by States prior to October 25, 1988, grantbacks are governed by section 456 of GEPA as in effect prior to the Hawkins-Stafford Act).

In cases where ED has recovered funds from an SEA or LEA that misspent Chapter 1 funds or failed to account properly for those funds, the SEA may request a "grantback." A grantback may not exceed 75 percent of the recovered funds.

Q1. What requirements must be met for the Secretary to award a grantback?

A. If an SEA wishes to request a grantback of Chapter 1 funds, the Chief State School Officer should submit the following to the Assistant Secretary for Elementary and Secondary Education:

- A letter that--
  - a. Requests the repayment of funds;
  - b. Provides assurances that--
    - (1) The practices in the SEA or LEA that resulted in the violation of law have been corrected; and
    - (2) The Chapter 1 program in the SEA or LEA has been reviewed during the current school year, and the SEA has determined that it is in compliance with all applicable Chapter 1 requirements.
- A detailed explanation, including documentation, if available, of actions taken to correct the specific violations.
- A plan for the use of grantback funds that--
  - a. Meets the requirements of Chapter 1;
  - b. To the extent possible, benefits the Chapter 1 children who were affected by the failure to comply or by the misuse of funds that resulted in the recovery. (If a time lapse makes it impossible to serve the same children, the plan must justify use of funds for the benefit of current participating Chapter 1 children.);
  - c. Shows that the use of the funds would achieve the purposes of Chapter 1; and
  - d. Includes the following:
    - (1) An identification of the recipient(s) of the grantback funds.

(2) A brief description of the current Chapter 1 program.

(3) A detailed description of the activities to be provided with grantback funds and how these activities would supplement the regular Chapter 1 program.

(4) An itemized budget that shows how the recipient(s) would spend the funds on the proposed activities.

(5) The beginning and ending dates of the project period.

(6) Evidence that parents or representatives of the children who would benefit from the grantback funds were consulted in planning the program.

(7) A description of how equitable services would be provided to eligible private school children.

- Evidence that the SEA has fully satisfied its financial liability or has entered into a repayment agreement with ED. It is important for the SEA to address any other outstanding debts with ED by making payment or by entering into a repayment agreement with ED before requesting a grantback of Chapter 1 funds.

- If funds were repaid to ED as the result of LEA audit findings under the Single Audit Act, audit materials that provide the basis for a step-by-step description of how the audit determinations were resolved by the SEA.

Q2. How long does it take to get a grantback?

A. From the time ED receives an approvable plan (one that incorporates the above requirements), it usually takes three to four months to complete the process. Thus, when a decision is made to request a grantback, the necessary actions should be initiated as soon as possible in order to avoid a possible delay in beginning the activities.

Q3. What is the period of availability for the use of grantback funds?

A. The period of availability is based on the Federal fiscal year, which ends on September 30. Grantback funds may remain available for expenditure for no more than three fiscal years following the fiscal year in which final agency action occurs. For example, if a final action occurred on November 25, 1989 (FY 1990), the period of availability would last until September 30, 1993.

Q4. What constitutes "final agency action" in determining the period of availability?

A. 1. For final audit determinations received by a State prior to October 25, 1988, the period of availability is determined from the last applicable event of the following:

- The issuance of the final determination letter by the appropriate official in ED. (If no final determination letter was issued, then the date that repayment was made.)

- A decision by the Education Appeal Board (EAB) upholding the audit determination.

- Sixty days after receipt of the EAB's decision; or 60 days after the Secretary's action modifying or setting aside the EAB's decision.

- A negotiated settlement and/or repayment agreement between ED and the SEA while a case is under administrative or judicial review pursuant to section 455 of GEPA.

- A final decision by the United States Court of Appeals for the circuit in which the SEA or LEA is located, or by the United States Supreme Court, upholding the audit determination.

2. Final agency action for a program determination received by a State on or after October 25, 1988 is the last applicable event of the following:

    - The issuance of written notice of a disallowance decision issued by an authorized Departmental official. (If no disallowance decision was issued, then the date that repayment was made.)

    - A decision by the Office of Administrative Law Judges (OALJ) upholding the disallowance decision.

    - Sixty days after receipt of the OALJ's decision; or the Secretary's decision modifying or setting aside the OALJ's decision.

    - A negotiated settlement and/or repayment agreement between ED and the SEA while a case is under administrative review.

NOTE: For program determinations received by a State on or after October 25, 1988, which are appealed to court, "final agency action" is the last applicable administrative action listed above, not any subsequent court decision or other action taken during judicial review.

Q5. What are the terms and conditions to which a grantback payment is subject during and after the project period?

A. Section 459(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the program. These include, but are not limited to, the following:

- The funds awarded under the grantback must be spent in accordance with--

    a. All applicable statutory and regulatory requirements;

b. The plan submitted by the SEA or LEA for the use of the funds and any amendments to that plan that are approved by the Secretary; and

c. The budget included in the plan and any amendments to the budget approved by the Secretary.

- All the funds awarded under the grantback must be obligated within the project period included in the plan.
- Separate accounting records must be maintained documenting the expenditure of the repaid funds.
- A report must be submitted to the Secretary no later than 90 days after the completion of the project that indicates that the funds were spent in accordance with the plan and the budget included in the plan.

Q6. What public notification is made that the Secretary intends to award a grantback?

A. The Secretary must publish a notice in the Federal Register 30 days prior to making a grantback payment. The notice explains the terms and conditions under which payment will be made and describes the plan for the use of funds. During the 30-day period, interested persons may submit comments regarding the proposed arrangement.

EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS

(EDGAR)

Regulatory Requirement

Section 200.5

Section 200.5 of the Chapter 1 regulations makes applicable the following parts of EDGAR:

- A limited number of provisions in Part 76 (State Administered Programs).
- Part 77 (Definitions).
- Part 78 (Education Appeal Board).
- Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless the State chooses to use its own written fiscal and administrative requirements.
- Part 81 (General Education Provisions Act--Enforcement).
- Part 85 (Governmentwide Debarment and Suspension (Non-Procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Q1. What provisions in Part 76 apply to Chapter 1?

A. The following provisions in Part 76 apply to Chapter 1:

- 76.1 - Programs to which Part 76 applies.
- 76.2 - Exceptions in program regulations to Part 76.
- 76.50 - Statutes determine eligibility and whether subgrants are made.
- 76.51 - A State distributes funds by formula or competition.
- 76.125-76.137 - Consolidated Grant Applications for Insular Areas.
- 76.401 - Disapproval of an application--opportunity for a hearing.
- 76.500 - Federal statutes and regulations on nondiscrimination.
- 76.530 - General cost principles.
- 76.532 - Use of funds for religion prohibited.
- 76.533 - Acquisition of real property; construction.

- 76.534 - Use of tuition and fees restricted.
- 76.560 - General indirect cost rates; exceptions.
- 76.561 - Approval of indirect cost rates.
- 76.563 - Restricted indirect cost rate--programs covered.
- 76.591 - Federal evaluation--cooperation by a grantee.
- 76.592 - Federal evaluation--satisfying requirement for State or subgrantee evaluation.
- 76.600 - Where to find construction regulations.
- 76.670-76.677 - Procedures for bypass.
- 76.681 - Protection of human research subjects.
- 76.682 - Treatment of animals.
- 76.683 - Health or safety standards for facilities.
- 76.700 - Compliance with statutes, regulations, State plan, and applications.
- 76.701 - The State or subgrantee administers or supervises each project.
- 76.702 - Fiscal control and fund accounting procedures.
- 76.703 - When a State may begin to obligate funds.
- 76.704 - When certain subgrantees may begin to obligate funds.
- 76.705 - Funds may be obligated during a "carryover period."
- 76.706 - Obligations made during a carryover period are subject to current statutes, regulations, and applications.
- 76.707 - When obligations are made.
- 76.720 - Financial and performance reports by a State.
- 76.722 - A subgrantee makes reports required by the State.
- 76.730 - Records related to grant funds.
- 76.731 - Records related to compliance.
- 76.734 - Record retention period.
- 76.740 - Protection of and accessibility to student records.

- 76.760 - More than one program may assist a single activity.
- 76.761 - Federal funds may pay 100 percent of cost.
- 76.783 - SEA action--subgrantee's opportunity for a hearing.
- 76.900 - Waiver of regulations prohibited.
- 76.901 - Education Appeal Board.
- 76.902 - Judicial review.
- 76.910 - Cooperation with audits.

Q2. **May a State apply its own written fiscal and administrative procedures rather than Part 80, which implements OMB Circulars A-102 and A-87?**

A. Yes. If a State wishes to apply its own written fiscal and administrative requirements rather than Part 80 of EDGAR, those requirements must meet the following criteria:

- Provide guidance that is sufficiently specific to ensure compliance with all applicable statutory and regulatory requirements.
- Ensure that funds are spent for reasonable and necessary costs of operating Chapter 1 programs.
- Ensure that funds are not used for general expenses required to carry out other responsibilities of State or local governments.

Q3. **If a State decides to adopt its own fiscal and administrative requirements rather than Part 80 of EDGAR, must the committee of practitioners review the decision?**

A. Yes. Section 1451 of Chapter 1 and §200.70 of the regulations state that the committee of practitioners must be convened to review any major proposal or final rule or regulation before publication. Therefore, a State's decision to apply its own procedures should be reviewed by this committee.

Q4. **May an SEA apply portions of Part 80 and use its own written procedures for other items covered by Part 80?**

A. Yes.

Q5. **How long must SEAs and LEAs retain fiscal and compliance records?**

A. Under section 437(a) of GEPA and 34 CFR 76.734 of EDGAR, SEAs and LEAs must retain records for five years after completion of a grant activity.

Q6. What does the Single Audit Act of 1984 require?

A. According to the Appendix to Part 80, the Single Audit Act of 1984 requires that an independent auditor annually audit SEAs or LEAs receiving $100,000 or more a year in Federal assistance for internal control and compliance. Those receiving between $25,000 and $100,000 a year have the option of participating in the single audit or an audit in accordance with the requirements of the programs in which they participate. State or local governments receiving less than $25,000 a year are governed by audit requirements prescribed by State or local law or regulation. Under a single audit, each major Federal assistance program is tested for representative charges based on the auditor's judgment.

Q7. For what portion of the cost of a single audit may Chapter 1 pay?

A. Chapter 1 may pay a prorated share of the cost of the audit according to the percentage Chapter 1 contributes toward the total amount of Federal assistance received by the LEA or SEA. The percentage may be exceeded, however, if appropriate documentation indicates higher actual costs were incurred to audit the Chapter 1 program.

Q8. To whom should audit reports be submitted?

A. Auditors submit the audit report to the organization audited following the audit. (When an LEA is audited, a copy of the report also goes to the SEA.) The recipient submits copies of the report to each Federal agency providing program funds. Recipients of more than $100,000 in Federal funds must submit a copy to the following clearinghouse designated by OMB: Data Preparation Division, U.S. Bureau of the Census, 1202 East 10th Street, Jeffersonville, Indiana 47132.

Q9. How can recipients of Federal education funds prepare for successful audits?

A. Ongoing activities that can develop audit readiness include the following:

- Establishing internal controls.
- Complying with Federal requirements.
- Maintaining records.
- Requesting internal audits.

Internal controls should be examined according to the following questions:

- Do payroll records support charges to Federal funds?
- Are procedures in place to verify that charges are allowable under grant or contract provisions?

- Are procedures adequate to verify that program participants are eligible?

- Do corrective actions result from monitoring activities?

Examples of types of compliance requirements applicable to ED programs include the following:

- Charges for direct labor to Federal grants.

- Treatment of grant-related income.

- Reporting of financial status.

- Eligibility of participants.

- Monitoring of activities.

- Allowability of services.

Records related to federally funded activities involving any portion of an audit process initiated prior to the end of the record retention period must be retained until the audit, audit resolution, or audit appeal has been completed. Recordkeeping should establish an audit trail beginning with the preparation of the application and should include records to support the application. Internal audits can also help determine whether adequate administrative and accounting controls are in place.

NOTE: The above information was taken from a brochure prepared by the Office of Inspector General entitled "Audit Readiness for Recipients of Federal Education Funds." This brochure contains other helpful advice and may be obtained by writing to the Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-1500.

Q10. What enforcement procedures apply to the Chapter 1 LEA program?

A. Section 3501 of the Hawkins-Stafford Act amended Part E of GEPA to provide for new enforcement procedures. The amended Part E requires the Secretary to establish an OALJ to replace the existing EAB and sets out new hearing procedures. 20 U.S.C. 1234-1234i. With the exception of provisions regarding withholding actions and judicial review of those actions, which are superseded by sections 1433 and 1434 of Chapter 1, Part E applies to the Chapter 1 LEA program. As a result, appeals from cost disallowance decisions, received by an SEA on or after October 25, 1988, as well as most other enforcement proceedings under the Chapter 1 LEA Program, will be heard by the OALJ. The regulations in 34 CFR Part 81 contain general procedural rules for proceedings before the OALJ and specific rules for OALJ hearings for the recovery of funds. Future proposed regulations implementing Part E will address whether withholding actions under the Chapter 1 LEA program will also be heard by the OALJ. The EAB will continue to hear appeals from determinations under the Chapter 1 LEA program received by an SEA before October 25.

Q11. Do governmentwide debarment and suspension (nonprocurement) requirements and governmentwide requirements for a drug-free workplace apply to Chapter 1?

A. Yes. Part 85 of EDGAR, which implements Executive Order 12549 in Subparts A-E and the Drug-Free Workplace Act of 1988 in Subpart F, applies to Chapter 1.

The regular debarment and suspension regulations provide that statutory entitlements and mandatory awards (but not sub-tier awards thereunder which are not themselves mandatory) are not covered by the debarment and suspension regulations (34 CFR 85.110(a)(2)(i)). The Secretary has concluded that this exception from coverage precludes the Secretary from denying funding under Chapter 1 or any other State-administered program based on a regular debarment or suspension. The exception also would prevent ED from denying assistance to a subgrantee under Chapter 1 or any other program in which subgrantees are entitled to funds if they meet certain requirements.

While ED could not cut off funds to a State or mandatory subgrantee, the Secretary has determined that all lower-tier covered transactions, such as the employment of an administrator (a covered transaction under 34 CFR 85.110(a)(1)(ii)(A)), would be subject to the debarment and suspension regulations. Such a debarment would not prohibit the receipt of funds by the State or mandatory subgrantee. However, the debarment would prohibit the subject individual from acting as a principal for the State or subgrantee or from participating in any other covered transaction under nonprocurement programs of the Federal Government.

As a result, if ED discovered any activity by an administrator of Chapter 1 that would constitute grounds for debarment, the debarring official for ED would take action to debar the individual. Further, if a State continued to do business with the individual and paid for the individual's services with Chapter 1 funds, ED would consider issuing a program determination letter to the State to recover the Chapter 1 funds. Accordingly, each State must submit to ED a primary-tier certification that its principals have not been debarred or suspended.

Under the drug-free workplace requirements in Subpart F, all grantees receiving a grant from any Federal agency must certify that they will maintain a drug-free workplace. The regulations do not apply to subgrantees. The Department has authority to deny funds under entitlement programs such as Chapter 1 to grantees that fail to meet the drug-free workplace requirements. Because the regulations do not apply to subgrantees, there is no need for States to take any other action to fully implement the requirements.

ELIGIBLE SCHOOLS

Statutory Requirement

Section 1013 of Chapter 1 of Title I, ESEA

Regulatory Requirements

Sections 200.30 and 200.33

Section 1013 of Chapter 1 and §200.30 of the regulations require an LEA to conduct its projects in attendance areas selected on the basis of an annual ranking of all eligible attendance areas. Eligible Chapter 1 attendance areas are those with high concentrations of children from low-income families. An attendance area has a high concentration of children from low-income families if (1) the percentage of low-income children in the attendance area is at least as high as the percentage of low-income children in the entire LEA, or (2) the number of low-income children in the attendance area is at least equal to the average number of low-income children per attendance area in the entire LEA. An LEA may rank its attendance areas by grade span groupings or for the entire LEA. In addition, an LEA has the flexibility in identifying and ranking its eligible attendance areas to apply several special rules. These special rules may be applied to either grade span groupings or the district as a whole. LEAs with a total enrollment of fewer than 1,000 children or no more than one attendance area or one school at each grade span do not have to comply with the requirements for identifying eligible schools.

Eligible Attendance Areas

In identifying eligible attendance areas, an LEA must use the best available measure for identifying children from low-income families. An LEA may use data on children from families receiving AFDC, data on families whose children are eligible under the National School Lunch Program, or other appropriate data. If an LEA uses a composite of several data sources, the sources must be weighted.

Q1. How does an LEA identify school attendance areas with high concentrations of low-income children?

A. An LEA must annually determine eligible attendance areas by using the percentage or numerical methods or a combination of the two methods within grade span groupings or the LEA as a whole.

In using the percentage method, an LEA designates attendance areas as eligible if the percentage of children from low-income families in an attendance area is at least equal to the percentage of children from low-income families in the entire LEA. The following is an example of an LEA that ranked all its attendance areas from the highest to lowest percentage of low-income children.

Percentage Method
LEA as a whole (K-12)

	Total Enrollment	Number of Low-Income Children	% of Low-Income Children
Attendance Area A	614	220	35.8%
Attendance Area B	600	215	35.8%
Attendance Area C	575	200	34.8%
Attendance Area D	533	150	28.1%
Attendance Area E	486	130	26.7%
Attendance Area F	850	210	24.7%
Attendance Area G	805	180	22.4%
Attendance Area H	750	105	14.0%
Attendance Area I	653	80	12.3%
	5,866	1,490	

Total Number of Low-income Children	÷	Total LEA Enrollment	=	Districtwide Average
1,490	÷	5,866	=	25.4%

Attendance areas at least as high as the districtwide average, or 25.4 percent, are eligible for Chapter 1 services.

*   *   *   *   *

The numerical method designates an attendance area as eligible if the number of children from low-income families is at least equal to the average number of children from low-income families per attendance area in the entire LEA. The following example shows the ranking of all attendance areas in the same LEA as above by using the number of low-income children found in each attendance area.

Numerical Method
LEA as a whole (K-12)

Attendance Area A	220
Attendance Area B	215
Attendance Area F	210
Attendance Area C	200
Attendance Area G	180
Attendance Area D	150
Attendance Area E	130
Attendance Area H	105
Attendance Area I	80
	1,490

Total Number of Low-income Children	÷	Number of Attendance Areas	=	Average Number of Low-income Children Per Attendance Area
1,490	÷	9	=	165.6

Attendance areas above the district average, or 165.6, are eligible for Chapter 1 services.

* * * * *

The combination method allows an LEA to designate attendance areas as eligible by using a combination of the percentage and numerical methods. The total number of eligible school attendance areas identified may not exceed the number the LEA would have identified as eligible when using either the percentage or numerical method for ranking attendance areas. The following is an example of the same LEA using the combination method.

Percentage Method		Numerical Method	
Attendance Area A	35.8%	Attendance Area A	220
Attendance Area B	35.8%	Attendance Area B	215
Attendance Area C	34.8%	Attendance Area F	210
Attendance Area D	28.1%	Attendance Area C	200
Attendance Area E	26.7%	Attendance Area G	180
Attendance Area F	24.7%	Attendance Area D	150
Attendance Area G	22.4%	Attendance Area E	130
Attendance Area H	14.0%	Attendance Area H	105
Attendance Area I	12.3%	Attendance Area I	80

Combination Method

Attendance Area A 35.8%
Attendance Area B 35.8%
Attendance Area F 210
Attendance Area C 200
Attendance Area D 28.1% or Attendance Area G 180

In determining the eligible areas using the combination method, the LEA in this example may not identify more than five attendance areas because that is the most that could be identified using either the percentage or numerical method. Although the LEA uses both lists to identify schools, each list is used in rank order. In this example, the combination method allows the LEA an option of either identifying Attendance Area D or G as eligible. That is, the LEA may identify as eligible an attendance area with 28.1 percent low-income children or an area with 180 low-income children.

Special Rules

After ranking attendance areas by the percentage, numerical, or combination method, an LEA has the discretion to exercise several special rules to identify eligible attendance areas. Each of the special rules may be applied to grade span groupings or to the LEA as a whole.

No-Wide Variance

An LEA may designate all attendance areas as eligible within a grade span grouping or in the entire LEA if all attendance areas fall within a range that is no more than 5 percentage points above and 5 percentage points below the grade span or LEA average. If an LEA elects to use this option, it must serve all the attendance areas within a grade span grouping or in the entire LEA, as appropriate.

The following are examples of the no-wide variance rule applied to an entire LEA. The first example shows an LEA that has "no-wide variance." The second example is an LEA that may not use this provision.

Example One (acceptable):

An LEA has ranked all attendance areas within the entire LEA from the highest to lowest percentage of children from low-income families and has determined the districtwide average to be 18 percent. The percentage of children from low-income families in all attendance areas range from a high concentration of 23 percent to a low of 13 percent. All attendance areas in this example fall within the required 5 percentage point range above and below the district average and qualify for the no-wide variance option. If the LEA elects to apply this option, all attendance areas are eligible and must be served.

Example Two (unacceptable):

An LEA has ranked all attendance areas from the highest to lowest percentage of children from low-income families and has a districtwide average of 12 percent. The concentration of low-income children in all attendance areas ranges from a high of 21 percent to a low of 10 percent. Although the attendance areas that fall below the districtwide average are within the allowable 5 percentage point range, the attendance areas above the districtwide average exceed the allowable 5 percentage point range. Therefore, this LEA would not qualify for the no-wide variance option.

25 Percent Rule

Notwithstanding a higher districtwide average, an LEA may designate as eligible any attendance area in which at least 25 percent of the children are from low-income families if it meets the expenditure requirements in section 1013(b)(2) of Chapter 1. To determine attendance area eligibility, an LEA must rank attendance areas by using the percentage of children from low-income families either within grade spans or the LEA as a whole. If an LEA does not select all eligible areas for participation, it must make the selection in rank order.

In order for an LEA to use the 25 percent rule, it must meet the expenditure requirements in section 1013(b)(2) of Chapter 1. Specifically, the LEA must spend in the current year in each school attendance area that received services in the preceding year, an aggregate per student amount of Chapter 1 funds and special State compensatory education funds that is at least equal to the amount spent per student in the preceding year. In other words, the LEA may not reduce Chapter 1 compensatory education services and State compensatory education services in order to serve additional schools under the 25 percent rule. However, the requirement does allow a reduction in the compensatory education expenditures if schools served in the preceding year are determined to need fewer resources. For example, if the number or needs of children to be served decreases, the funds required to meet those needs could also decrease.

Schools Serving Ineligible Attendance Areas

An LEA may identify as eligible a school that serves an ineligible attendance area or a school that serves more than one attendance area if the proportion of low-income children in average daily attendance in the school is substantially equal to the proportion of low-income children in an eligible attendance area. An LEA must then follow the ranking requirements and may apply any special rules for identifying and ranking school attendance areas to the school.

For example, in the response to Q1, the percentage method illustration shows that Attendance Area F was an ineligible area with 24.7 percent low-income children residing in the area. However, if the actual number of children in the school serving Attendance Area F was 800 and all 210 low-income children were in the school, the school's low-income percentage would be 26.3 percent. Therefore, the school could be identified as eligible as its percentage of low-income children is above the districtwide average of 25.4 percent.

Serving Lower Ranked School Attendance Areas

With SEA approval, an LEA may designate as eligible and serve school attendance areas or schools with substantially higher numbers or percentages of educationally deprived children before areas or schools with higher concentrations of children from low-income families. Prior to approval, the SEA must determine that the LEA meets the following criteria:

- The LEA may not serve more attendance areas than could otherwise be served.

- The implementation of this provision will not substantially impair the delivery of services to educationally deprived children from low-income families in project areas served by the LEA.

Continuation of Services Provision

A school attendance area or school that was designated in accordance with the percentage, numerical, or combination method and served in the immediately preceding fiscal year may continue to be served for one year even though the school attendance area is not eligible or is eligible but not selected. The school attendance area that continues to be served, or "grandfathered," may take the place of the lowest ranked, eligible school attendance area, or it may be an additional area or school served.

Skipping Eligible Attendance Areas

With SEA approval, an LEA may skip eligible attendance areas with a higher percentage or number of low-income children if the children in those attendance areas are receiving, from non-Federal sources, services of the same nature and scope as would be provided under Chapter 1. The SEA must ensure that the services are the same nature and scope and that the LEA is providing

Chapter 1 services to private school children even though the public school children are "skipped."

In implementing this provision, the LEA must determine the number of private school children to receive services without regard to the non-Federal compensatory education funds used to serve eligible children in public schools. To determine the total number of private school children to be served, the LEA must determine the number that would have been served if only Chapter 1 funds were available and no attendance areas were skipped. For example, if the LEA determines that, absent services of the same nature and scope provided from non-Chapter 1 funds, the LEA would serve three attendance areas, the LEA must determine the number of private school children who would be served in those three areas. Assume that for all three areas a total of 36 private school children would be served. If non-Chapter 1 funds are used to serve one of the three areas, enabling the LEA to use Chapter 1 funds to serve a fourth area, private school children in all four areas must be considered for Chapter 1 services. The LEA must select 36 private school children who are most in need from the four attendance areas.

Q2. May a school attendance area that was served in the prior year under the 25 percent rule but drops below 25 percent in the current year continue to be served under the "grandfather clause" in §200.30(b)(5) of the regulations?

A. No. Section 1013(b)(5) of Chapter 1 requires that, in order for an LEA to continue to serve a school attendance area or school that becomes ineligible, the area or school must have been "designated and served in accordance with subsection (a) in the immediately preceding fiscal year." Subsection (a) of section 1013 of Chapter 1 sets forth the general rule for designating eligible school attendance areas--that is, school attendance areas having high concentrations of children from low-income families. Such areas are defined in §200.30(a)(2) of the regulations as areas in which the number or percentage of children from low-income families is at least equal to the districtwide average. The exceptions to the general rule, including the 25 percent rule, are contained in subsection (b) of section 1013 of Chapter 1. Therefore, the "grandfather clause" in §200.30(b)(5) of the regulations may be applied only to a school attendance area or school identified as eligible and served in the previous year because it was at or above the districtwide average.

Q3. Under the "no-wide variance" provision in §200.30(b)(1) of the regulations, must all school attendance areas be served?

A. Yes. Section 1013(b)(1) of Chapter 1, which §200.30(b)(1) of the regulations implements, states that an LEA may "designate as eligible and serve all of its attendance areas...if the percentage of children from low-income families in each attendance area of the agency is within 5 percentage points of the average percentage of such children..." (emphasis added).

In effect, this provision recognizes that there may be LEAs in which there is a uniform distribution of children from low-income families across the entire school district, thereby making selection of only those areas above the districtwide average a less meaningful distinction than in other LEAs. Depending on sufficient funds to serve all attendance areas required by the "no-wide variance" provision, the LEA has the ultimate choice of whether this provision would be the most beneficial to the Chapter 1 program. Therefore, if the LEA does not have sufficient funds to serve all of its areas, it may select another targeting option.

Q4. **May an LEA use the "grandfather clause" to continue services for attendance areas served under any of the special rules?**

A. No. As indicated in the answer to Q2, section 1013(b)(5) of Chapter 1 requires that, in order to continue service to an attendance area that becomes ineligible, the attendance area must have been eligible and selected for participation because it had a high concentration of children from low-income families selected under section 1013(a), i.e., those at or above the districtwide average number or percentage of children from low-income families.

Q5. **When applying the 25 percent rule, must all attendance areas with at least 25 percent low-income children be served?**

A. No. However, attendance areas to be served must be selected in rank order.

Q6. **In determining eligible attendance areas by grade span groupings, may an LEA include all the low-income children who reside within the attendance area?**

A. No. When an LEA ranks school attendance areas by grade spans, the number of children to be included in the ranking process may include only the students in that grade span.

Q7. **May an LEA use different measures of low-income for different grade spans?**

A. Yes, so long as the measures are consistent for each grade span.

Allocation of Resources

Q8. **What does an LEA take into consideration when allocating resources?**

A. An LEA must allocate resources to project schools, including resources for children in local N or D institutions and children enrolled in private schools, on the basis of the following criteria:

- The number of project areas to be selected in order to concentrate funds on children in greatest need. Questions to be asked:
    - Have any attendance areas been identified as needing program improvement?
    - Is the student population highly mobile?

  - Is there a greater concentration of highly skilled staff in some attendance areas?

  - Is student attendance low or the dropout level high in some attendance areas?

- The number and needs of the children selected to participate. Questions to be asked:

  - How many students per eligible site will be served?

  - What are the needs of these students?

  - What are the desired outcomes for eligible children?

  - Do they all need reading? Math? Language Arts?

  - What grade levels and instructional areas will be served at each site?

- The degree of educational deprivation of the children to be served. Questions to be asked:

  - Do most students have similar levels of deprivation?

  - Do any project schools require additional resources because of low performance?

  - Do all students need instruction on a daily basis?

- The nature of services to be provided per site. Questions to be asked:

  - What type and length of services will be provided?

  - Will some sites require additional resources?

  - Will instructional time vary according to the needs of the students?

ELIGIBLE CHILDREN

Statutory Requirement

Section 1014 of Chapter 1 of Title I, ESEA

Regulatory Requirement

Section 200.31

Section 1014 of Chapter 1 and §200.31 of the regulations require an LEA to conduct an annual assessment of educational needs that identifies educationally deprived children in all eligible attendance areas. Using data from the needs assessment, the LEA determines the instructional areas and grade levels to be served and establishes criteria for selecting children having the greatest need for special assistance for participation in the program.

Student Eligibility

Q1. What is meant by "educationally deprived children"?

A. "Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

Q2. What objective criteria may be used to identify educationally deprived children?

A. An LEA is required to establish educationally related objective criteria, which include written or oral testing instruments, for each grade level and instructional area and apply the criteria uniformly to particular grade levels throughout the LEA. Suggested objective criteria could include, but are not limited to, the following:

- Standardized tests.
- Regular classroom teachers' assessment of performance in the Chapter 1 instructional area.
- Criterion-referenced tests.
- Reading or mathematics placement assessments.
- Other assessment instruments related to educational performance.

An LEA may use a combination of objective criteria.

Q3. May an LEA continue services to a Chapter 1 participant who changes residence to an ineligible attendance area?

A. An LEA may continue to serve for the remainder of the current school year Chapter 1 students who begin participation in a Chapter 1 eligible attendance area and move to an ineligible attendance area.

Q4. May an LEA serve students who reside in an eligible attendance area within the LEA even though these students attend school in an ineligible attendance area within the LEA under a voluntary desegregation or open enrollment plan?

A. Yes. Students who reside in an eligible attendance area within the LEA but attend school in an ineligible attendance area within the LEA may be served under Chapter 1 if these students meet the LEA's definition of educational deprivation.

The following are some ways in which these students may be served. This list is not all inclusive.

- Students may receive service directly in the ineligible school building they attend during their regular day just as students do in eligible attendance areas so long as the program is of sufficient size, scope, and quality.
- Students may receive services in a neutral location. This may be done during the regular school day, before or after school, or on weekends. In this manner, several students who have volunteered to attend various schools serving ineligible attendance areas can be brought together in one group and served.
- Students may be served during the summer.
- Students may be served in their homes by tutors.
- Students could be given assignments and resources to take home. Some of these may include take-home computers and software, workbooks, books, and other instructional materials.

Q5. May an educationally deprived child who was served in the previous year but is no longer in greatest need of assistance continue to receive services?

A. Section 200.31(c)(3) allows an LEA to continue to serve for a maximum of two additional years a child who is no longer determined in greatest need but who continues to be educationally deprived. In addition, under an approved innovation project, an LEA may continue to serve children who were served in any previous year, even if they are no longer educationally deprived, for a period sufficient to maintain progress made during the period of their participation in Chapter 1.

Q6. May an LEA use Chapter 1 funds to identify educationally deprived children?

A. No. It is the responsibility of the LEA to identify educationally deprived students from State or local sources. If the LEA's district-wide testing program only includes certain grade levels, the LEA must use alternative educationally related information for the remaining grade levels. Once eligible educationally deprived children are identified, Chapter 1 funds may be used to identify those most in need or to identify their specific educational needs.

Q7. May students be selected solely because they have been retained in grade?

A. No. Retention in grade may not result in the selection of children in greatest need under the LEA's uniform selection criteria. An LEA must select participants on the basis of objective criteria established for each grade level and instructional area. The criteria must be uniformly applied to all eligible educationally deprived students in project areas.

Q8. If an LEA uses testing instruments as part of its selection process, must the LEA use the same student selection test instrument in all schools?

A. In determining student eligibility for Chapter 1, §200.31(b)(4) and (5) requires that an LEA must establish educational criteria and apply the criteria uniformly within grade levels. Therefore, an LEA must use either the same testing instrument or instruments that are comparable within particular grade levels.

Needs Assessment

An LEA that receives Chapter 1 funds is required to assess annually the educational needs of educationally deprived children in all eligible attendance areas, including educationally deprived children in private schools and in local N or D institutions. Through this needs assessment process, the LEA determines the instructional areas and grades to be included in the Chapter 1 program and the educationally deprived children who will participate.

Q9. Who determines grade levels and instructional areas in which the program will focus?

A. The LEA.

Q10. What steps might an LEA take in meeting the annual needs assessment requirement?

A. The following is an example of a step-by-step process for assessing educational needs:

Step One: IDENTIFICATION OF EDUCATIONALLY DEPRIVED CHILDREN

The LEA collects student academic performance information from all eligible attendance areas, including children attending private schools and in local N or D institutions.

Sources of academic performance data could include the following:

- District standardized test scores.
- Results of districtwide informal assessments.
- Student records.

- District surveys of professional staff.

- State or locally mandated tests.

The LEA establishes the standard for identifying educationally deprived children.

The LEA identifies as educationally deprived all students from eligible attendance areas whose academic performance falls below the standard.

The LEA maintains records to document that educationally deprived children in all eligible attendance areas have been identified.

Step Two: IDENTIFICATION OF INSTRUCTIONAL AREAS AND GRADE LEVELS

On the basis of the information collected in Step One and considering services already provided from other sources, the LEA identifies the instructional areas and grade levels that will be the focus of the program. Instructional areas and grade levels may vary among and within school attendance areas if the needs assessment data support those variations.

On the basis of the ranking of school attendance areas required by §200.30(a)(3) and the needs assessment information, the LEA also determines which eligible attendance areas and schools will be selected for participation in the program.

Step Three: SELECTION OF STUDENTS TO BE SERVED

The LEA establishes educationally related objective criteria, which may include written or oral testing instruments, for each grade level and instructional area to select educationally deprived children for participation.

The LEA uniformly applies the student selection criteria to particular grade levels throughout the LEA and selects those children with the greatest need for special assistance.

Step Four: DETERMINATION OF EDUCATIONAL NEEDS TO BE ADDRESSED

The LEA determines the specific educational needs of the selected students. In making this determination, the LEA may use Chapter 1 funds to further assess or diagnose the selected students' educational needs with sufficient specificity to ensure concentration on those needs.

The LEA designs project activities that focus on the selected students' special educational needs. Because selected students may have different needs, services may differ from student to student. The LEA considers the following items when designing activities and allocating resources:

- The personnel required, both numbers and types.

- The variety and amount of instructional material, including library resources.

- The degree of educational deprivation of the students selected for participation.

- The facility and equipment needs.

Q11. **May an LEA predetermine grade levels and instructional areas to be served before conducting the annual needs assessment?**

A. No. The LEA must first identify the educationally deprived children in all eligible attendance areas. On the basis of information gathered during this first step concerning the numbers and needs of the educationally deprived children, the LEA then identifies the general instructional areas and grade levels on which the program will focus.

Q12. **Is it necessary to provide services in the same instructional areas in all eligible attendance areas?**

A. No. Section 200.31(b)(2) of the regulations provides that instructional areas and grade levels may vary among and within school attendance areas so long as the needs assessment data support those variations. In addition, the needs assessment data may support program design variations such as frequency of service, instructional group size, and length of the instructional period.

Q13. **How can selection criteria be applied uniformly to grade levels throughout the LEA and still have variations in the instructional areas and grade levels to be served? What documentation is required to justify the variations in instructional areas and services?**

A. The following is an example of an LEA that uniformly applied student selection criteria and varied the grade levels and instructional areas served on the basis of the needs assessment data.

Based on the needs assessment, the LEA provides Chapter 1 services in four eligible elementary attendance areas and for eligible children enrolled in one private school. To determine those students in greatest need, the LEA uniformly applies a cut-off score at the 36th percentile in both reading and mathematics on a nationally normed standardized test, and also considers the results of a uniformly applied teacher assessment instrument.

An analysis of the numbers and needs of children selected shows that three schools demonstrate equal needs for both reading and mathematics in the first through sixth grades. The fourth school shows only a need for reading services in the first through third grades. The children enrolled in the private school have a need for mathematics services in the first through sixth grades. The LEA implements a program that varies instructional areas and grades across schools.

Q14. **When conducting an LEA needs assessment, how should library resource needs be determined?**

A. After the needs of eligible Chapter 1 children have been determined, an LEA must review the available resources for addressing these needs, including library resources. An LEA should include library resources when considering the various instructional materials needed to serve Chapter 1 students. Library resources are not limited to books, but include supplemental materials directly related to the Chapter 1 program. For example, audio/visual cassettes or other materials that coordinate with the Chapter 1 instruction could be library resources.

Q15. **May handicapped children be served in the Chapter 1 program?**

A. Yes. Under §200.31(c)(5), children receiving services to overcome a handicapping condition may also be eligible to receive Chapter 1 services, if they have needs stemming from educational deprivation and not solely related to the handicapping condition and they are selected on the same basis as other children selected to receive Chapter 1 services. However, Chapter 1 funds may not be used to provide the special education and related services that are required by Federal, State, or local law. In addition, the LEA must provide maximum coordination between Chapter 1 services and services provided to address children's handicapping conditions.

Children with Limited English Proficiency

Q16. **May LEP children receive Chapter 1 services?**

A. Yes. LEAs are required by law to provide special educational services for LEP children. Chapter 1 funds may not be used to provide these services. However, if LEP children have needs stemming from educational deprivation and not solely from their lack of proficiency in English, the children must be identified as eligible and selected for Chapter 1 services on the same basis as other Chapter 1 children. The LEA must coordinate the Chapter 1 services with the services required by law.

Q17. **How does an LEA identify LEP children as eligible educationally deprived children?**

A. An LEP child can be determined to be eligible for Chapter 1 services by either of the following two selection processes:

Students with sufficient English proficiency	Students without sufficient English proficiency
Use the same selection criteria as English-speaking students to determine eligibility, with or without bilingual assistance.	Uniformly apply any one or a combination of measures, such as the following: o Classroom teacher assessment of student performance. o Language dominance test with other measures.

- A weighting of composite assessment scores.
- Locally developed criterion-referenced tests.

Q18. May a Chapter 1 program be altered to meet the special language needs of LEP children?

A. The purpose of a Chapter 1 program is to remediate children's educational deprivation and not the children's lack of English language proficiency. An LEA, however, may adjust the instruction to accommodate LEP children, for example, by providing bilingual staff and materials for these children.

Preschool

Section 1014(a) of Chapter 1 includes preschool children among the children eligible for Chapter 1 services. Section 200.6(c) of the regulations defines "preschool children" as children below the age or grade level at which an LEA provides free public education, and of an age or grade level to benefit from an organized instructional program provided in a school or other educational setting.

Q19. Does the Chapter 1 definition of "preschool children" include five-year-old children who reside in an LEA that does not include kindergarten as part of its free public education?

A. Yes.

Q20. Must the preschool student selection criteria include a standardized test?

A. No. However, the information used to identify Chapter 1 preschool children must be educational and uniformly applied to all preschool children who reside in eligible attendance areas and whose parents agree to their children's participation.

Q21. What types of educationally related selection criteria may be used to select children for Chapter 1 preschool services?

A. Criteria used for preschool student selection must be educational and may include the results from sources such as:

- Readiness tests.
- Diagnostic developmental assessments.
- Teacher observations.

Q22. May factors such as family stability, family income, gender, level of parents' education, siblings' school performance, or sibling eligibility for Chapter 1 be used as selection criteria for preschool participants?

A. No. Criteria for selecting preschool participants must be educational.

Q23. May children other than those determined to be educationally deprived participate in preschool programs?

A. No. The eligibility requirements for preschool children are identical to eligibility requirements for school age children:

- The participants must reside in eligible attendance areas.
- The participants must be identified as educationally deprived.
- The children selected for participation must be those in greatest need.

Q24. For LEAs that have no preschool programs and, therefore, no existing needs assessment data for this group, may Chapter 1 bear the cost of gathering these data?

A. Yes. In an LEA that does not have existing data to identify educationally deprived preschool children, the cost of identifying these children in eligible attendance areas is an allowable Chapter 1 expenditure.

Homeless Children

Q25. How should homeless children, eligible for inclusion under the Stewart B. McKinney Homeless Assistance Act, attending Chapter 1 schools be considered when selecting children for participation for Chapter 1?

A. Under section 722(e)(5) of the Stewart B. McKinney Homeless Assistance Act, a State receiving funds under that Act is required to submit a State plan that includes a provision to ensure that "[e]ach homeless child shall be provided services comparable to services offered other students in the school...including educational services for which the child meets the eligibility criteria, such as compensatory educational programs for the disadvantaged...." Therefore, because homeless children, by definition, do not have a fixed, regular, and adequate night-time residence, educationally deprived homeless children attending schools that have Chapter 1 projects are eligible for participation provided they meet the same educational criteria as other children in the school.

Q26. May homeless children (those identifiable under the McKinney Act) attending non-Chapter 1 schools, including shelter schools, be served under Chapter 1?

A. Homeless children, by definition, do not have a fixed, regular, and adequate night-time residence. Those children, therefore, cannot meet the eligibility requirement that they reside in a project area and would, in effect, be precluded from receiving Chapter 1 services. To ensure that these children, who may be among the most needy, are not denied services because of an eligibility requirement they cannot meet, LEAs may serve educationally deprived homeless children without regard to the residency requirement.

SCHOOLWIDE PROJECTS

Statutory Requirement

Section 1015 of Chapter 1 of Title I, ESEA

Regulatory Requirement

Section 200.36

The schoolwide project provision in section 1015 of Chapter 1 authorizes an LEA to use Chapter 1 funds to carry out a project to upgrade the entire educational program in a school that meets the schoolwide project requirements. Congress included this authority because once the percentage of poverty children in a Chapter 1 school reaches a very high level, Congress believed it made little sense to enforce requirements that Chapter 1 serve only Chapter 1 children or that Chapter 1 services be supplemental in character. Rather, Congress believed it was a sounder educational practice to plan a curriculum focusing on the entire educational program. Thus, Congress devised an alternative approach to improving the educational opportunities of educationally deprived children in high poverty schools by authorizing schoolwide projects.

The LEA may carry out a schoolwide project in any school serving an attendance area that is eligible to receive Chapter 1 services and in which, for the first year of a three-year project period, not less than 75 percent of the children are from low-income families or in any eligible school in which not less than 75 percent of the children enrolled in the school are from low-income families. Unlike most Chapter 1 projects, a schoolwide project includes activities designed to improve the overall instructional program in the school, and not merely activities that supplement activities that would otherwise be provided with non-Federal funds. The LEA, therefore, designs the schoolwide project to address the educational needs of all students in the school. In doing so, however, the LEA must pay particular attention to the needs of educationally deprived children. The LEA must carefully determine the resources necessary to ensure that the schoolwide project is of sufficient size, scope, and quality to meet the educational needs of all children in the school, especially the educationally deprived children.

Eligibility for a Schoolwide Project

Q1. **Who makes the decision to operate a schoolwide project?**

A. The LEA has the responsibility of deciding in which schools, if any, to operate schoolwide projects. However, in its decisionmaking process, the LEA should consult with the parents and staff of each school to be assured that the staff and parents understand and support the concept of a schoolwide project. Moreover, an LEA may not operate a schoolwide project unless its plan has been approved by the SEA.

Q2. **May LEAs continue to conduct a schoolwide project in a school eligible at the time of application if in the succeeding years the school does not meet the criterion of 75 percent poverty?**

A. Yes. The 75 percent poverty criterion must be met only in the first year of a three-year schoolwide project.

Q3. May an LEA continue the schoolwide project for a second three-year period if the school does not meet the 75 percent poverty criterion?

A. No. For the first year of each three-year schoolwide project period, the 75 percent poverty criterion must be met.

Q4. If an LEA has several schools that qualify for schoolwide projects, may it use its entire Chapter 1 allocation to implement schoolwide projects in these schools?

A. Yes, assuming the needs assessment data support that decision. However, the schoolwide project schools must be the highest ranked schools.

Q5. Must an LEA conduct a schoolwide project in each school that meets the 75 percent poverty criterion?

A. No. In addition, an LEA need not select schools for schoolwide projects in rank order. However, the LEA must still provide regular Chapter 1 services in attendance areas not selected for schoolwide projects if those areas rank higher than the schoolwide project schools.

Required Plan

Q6. May the year during which the schoolwide project plan is written be considered the first year of the plan?

A. No. A plan submitted by the LEA to the SEA for approval must cover a three-year span. Therefore, the plan must be completed before implementation. Moreover, achievement must be measured for a three-year period before a schoolwide project may be continued for another three-year period. If planning were to constitute the first year, the students' progress would be based on two years of performance rather than the required three years.

Q7. What must be included in a plan for a schoolwide project?

A. A plan for a schoolwide project must contain the elements listed in section 1015(b) of Chapter 1 and §200.36(b) of the regulations. The plan must be approved by the SEA before the LEA may operate the schoolwide project.

Q8. Must an LEA submit a separate application to the SEA for a schoolwide project?

A. Not necessarily. Depending on the nature of the application and approval process, the LEA might submit the schoolwide project plan as a component of its application or as a separate application.

Q9. Who must be involved in the development of a schoolwide project plan?

A. Individuals from the following groups--parents, teachers, librarians, educational aides, pupil services personnel, administrators, students (if the plan relates to a secondary school)--who will be engaged in carrying out the plan must be involved in the development of the entire schoolwide project plan.

Q10. In a schoolwide project, is it permissible to spend less time with noneducationally deprived students on particular topics than with educationally deprived students?

A. Yes. As in a regular Chapter 1 project school or even a nonproject school, the time spent with a student should be in relation to the student's degree of educational deprivation, need, and learning style.

Q11. What is an example of a schoolwide project?

A. An elementary school serves grades K-6, is eligible to receive Chapter 1 services, and 87 percent of the children enrolled in the school are from low-income families. The comprehensive needs assessment of all the school's students indicates that the greatest weakness is in reading comprehension in grades 4-6. The other most significant weaknesses in the school are in logical reasoning and analysis in grades 2-6 and reading comprehension in grades 1-3. The LEA discussed these results with the students' parents, teachers, librarian, educational aides, pupil services personnel, and school administrators and subsequently developed an educational plan for the school.

The plan's emphasis is on higher order thinking skills and the incorporation of educational activities that teach such skills. The plan includes the following:

- Training for all school staff that provides specific approaches and activities to be used for teaching higher order thinking and analytical skills.
- Training for parents in how advanced skills can be taught at home and incorporated into home activities.
- A new reading program and related supplemental materials for students in grades 4-6 to reinforce basic skills already learned and teach advanced skills.
- An additional hour beyond the regular school day for all students to be spent on reading literature, either aloud by the teacher to the class or independently by the students.
- The adoption of an approach for teaching higher order thinking skills in all subjects taught in the school.
- Lessons for students in grades K-3 that incorporate appropriate advanced skills that are essential for grades 4-6 and that will prevent a decline in performance in future grades.
- The use of materials for reading and writing lessons that covers issues being taught in other subjects.

- Continual progress updates with individuals involved in the students' education.

Also included in the plan are procedures for measuring progress both for the regular Chapter 1 program improvement requirements and for the schoolwide project accountability requirements.

The LEA's definition of educational deprivation, 30th percentile and below on a standardized reading test, is used to identify educationally deprived students at the school for funding and accountability purposes. The per pupil expenditure of Chapter 1 funds for each educationally deprived student at the school exceeds the Chapter 1 per pupil expenditure at other Chapter 1 project schools in the LEA so that all planned activities can be sufficiently conducted.

Fiscal Requirements

Q12. **How is the number of educationally deprived students in a schoolwide project determined?**

A. The LEA may identify--

- All children meeting the definition of educationally deprived children provided in §200.6(c) of the regulations which is "children whose educational attainment is below the level that is appropriate for children of their age" (generally interpreted as below the 50th percentile); or
- The number of children in the schoolwide project below the highest ranked child served in other project schools in the LEA (the district percentile cut-off).

Q13. **If the Chapter 1 percentile score cut-offs in a district are different for different instructional areas--e.g., reading 30th percentile, mathematics 40th percentile--how may calculations be made for the distribution of Chapter 1 funds to a schoolwide project?**

A. If an LEA elects to determine the number of educationally deprived children in a schoolwide project on the basis of its cut-off scores in other schools, it may apply the highest score (in this case, the 40th percentile), to both instructional areas, or the district cut-offs (in this case, reading 30th percentile, math 40th percentile).

Q14. **When an LEA is counting the number of educationally deprived children in a schoolwide project school for the purposes of distributing Chapter 1 funds, measuring progress, and demonstrating accountability, how are handicapped and LEP children counted?**

A. Handicapped and LEP children are counted as educationally deprived if they were identified as such in the LEA's annual needs assessment.

Q15. **When determining the amount of Chapter 1 funds to be distributed to a schoolwide project school, on what count, duplicated or unduplicated, is the per pupil amount based?**

A. The LEA may use a duplicated or unduplicated count for children who meet the criteria in more than one instructional area for determining the amount of Chapter 1 funds to be distributed to a schoolwide project. However, the LEA should use the same count, either duplicated or unduplicated, in the schoolwide project as in other project areas.

Q16. What should an LEA consider when determining the amount of funds to distribute to a schoolwide project school?

A. The LEA should consider the needs of the school's students (as determined by the comprehensive needs assessment), the goals and objectives of the schoolwide project, the approach by which such goals and objectives will be accomplished, and the cost of the resources necessary to effectively implement the approach. The LEA must ensure that it distributes sufficient Chapter 1 funds to a schoolwide project to achieve improved performance of educationally deprived children in the project.

Q17. May an LEA choose to allocate additional funds to schoolwide projects from sources other than Chapter 1?

A. Yes. An LEA may wish, for example, to allocate additional funds (other than Chapter 1) to schoolwide projects in order to meet the size, scope, and quality requirement. The LEA may also have determined that the amount of Chapter 1 funds calculated for the schoolwide project would not be sufficient to carry out the planned activities successfully.

Q18. How is the amount of Chapter 1 funds for a schoolwide project calculated?

A. The LEA must provide an amount of Chapter 1 funds to a schoolwide project that, per educationally deprived child, equals or exceeds the amount of Chapter 1 funds made available per educationally deprived child served in other Chapter 1 project schools. The LEA should bear in mind, however, that Chapter 1 funds in a schoolwide project, by definition, benefit the entire student population, not just educationally deprived children. Yet, the LEA must measure the success of its schoolwide project in terms of whether the educationally deprived children made the requisite progress. As a result, the LEA must ensure that the resources it devotes to its schoolwide project are sufficient to achieve the necessary results.

Below are three ways (not all inclusive) in which schoolwide project Chapter 1 funds can be calculated. For all three examples, assume:

The districtwide cut-off for determining educational deprivation is the 30th percentile. In a regular Chapter 1 project school, there are 400 educationally deprived students served under Chapter 1 and the average Chapter 1 per pupil expenditure is $500. An average school would receive a total of $200,000 of Chapter 1 funds.

Example 1: The schoolwide project uses the districtwide cut-off, 30th percentile, to identify educationally deprived students. The school's total population is 1,000 and 400 students are identified as educationally deprived. In regular project schools, the LEA distributes, per educationally deprived student, $500. The schoolwide project, therefore, must receive at least $200,000 in Chapter 1 funds ($500 x 400 educationally deprived = $200,000).

Example 2: The schoolwide project uses the definition in §200.6(c) of the regulations to identify educationally deprived students (educational attainment is below level appropriate for age--often equated to below the 50th percentile). This school's total population is 1,000 and 700 students are identified as educationally deprived. In regular project schools, the LEA distributes, per educationally deprived student, $500. The schoolwide project, therefore, must receive at least $350,000 in Chapter 1 funds ($500 x 700 educationally deprived = $350,000).

Example 3: The schoolwide project uses the districtwide cut-off, 30th percentile, to identify educationally deprived students. The school's total population is 1,000 and 400 students are identified as educationally deprived. Rather than use the district average of $500, the LEA distributes, per educationally deprived student in the schoolwide project, $600. The schoolwide project, therefore, receives $240,000 in Chapter 1 funds ($600 x 400 educationally deprived = $240,000).

Q19. **May an LEA allocate to a schoolwide project more Chapter 1 funds the first year than the next two years and look at the total allocation for the three-year period as an average?**

A. No. The LEA must meet the requirements set forth in section 1015(b)(6)(A) of Chapter 1 and §200.36(c)(1)(i) of the regulations each year. Because the Chapter 1 funding for a schoolwide project is based on the number of educationally deprived children in the school and the amount of Chapter 1 funds provided for each educationally deprived child in other project schools--both of which are annual determinations--the funding requirements for schoolwide projects must also be met annually.

Q20. **Must the fiscal requirement regarding the amount of State and local funds expended per child in a schoolwide project be reviewed annually?**

A. Yes. For each fiscal year during which a schoolwide project is conducted, the amount of local and State funds expended per child must be at least equal to what the LEA expended per child in that school in the preceding fiscal year.

Q21. **Is a schoolwide project school required to demonstrate comparability?**

A. Yes. The LEA is required by section 1015(c)(2)(C) of Chapter 1 and §200.36(c)(4) of the regulations to comply with the Chapter 1 comparability requirements.

Q22. **Is a schoolwide project school required to demonstrate compliance with the supplement, not supplant requirement?**

A. Yes. An LEA must be able to demonstrate that Chapter 1 funds are being used in each schoolwide project to increase the level of funds that would have been made available from non-Federal sources, in the absence of Chapter 1 funds, for educating the school's students. However, the

LEA is not required to demonstrate that the services paid for with Chapter 1 funds supplement the services regularly provided in the schoolwide project school.

Q23. **What records must the LEA keep regarding Chapter 1 funds expended in a schoolwide project?**

A. The LEA must keep records to document expenditures of Chapter 1 funds in a schoolwide project in order to ensure that Chapter 1 funds are expended within their period of availability. The LEA is not required to (a) comply with Chapter 1 requirements prohibiting commingling of Chapter 1 with regular program funds in order to show that Chapter 1 funds benefit only educationally deprived children; (b) identify particular children as eligible to participate in the schoolwide project (however, educationally deprived children must be identified for planning purposes, fiscal requirements, and accountability); or (c) demonstrate that the particular services paid for with Chapter 1 funds supplement the services regularly provided in that school.

Effect of Selection for a Schoolwide Project

Q24. **How are special education and LEP students to be counted and served by Chapter 1 under a schoolwide project?**

A. A schoolwide project is to upgrade the entire educational program in a school as a way of improving the performance of educationally deprived children in the school. For the purposes of calculating appropriate funding for the schoolwide project, evaluating the project's effectiveness, and determining if the schoolwide project accountability requirements are met, special education and LEP students must be included if they meet the definition of educationally deprived children the LEA is using in the schoolwide project. In addition, special education and LEP students must receive services they are otherwise required by law to receive to meet their needs.

Uses of Funds

Q25. **What activities may be supported by Chapter 1 funds in a schoolwide project?**

A. In addition to the activities for regular Chapter 1 projects listed in §200.4 of the regulations, an LEA may use Chapter 1 funds in schoolwide projects to plan and implement effective schools programs and other activities to improve the instructional program and pupil services in the school such as reducing class size, training staff and parents, and implementing extended-day programs.

Program Improvement and Accountability Requirements

Q26. **How is student progress aggregated in a schoolwide project for determining the need for program improvement?**

A. The program improvement requirements in §§200.37 and 200.38 of the regulations that apply to regular Chapter 1 programs are also applicable to schoolwide projects. Therefore, if the educationally deprived children, in the aggregate, in a schoolwide project do not show substantial progress toward meeting the LEA's desired outcomes or show no improvement or a decline in aggregate performance, the LEA must identify that school as needing program improvement. To determine whether substantial progress has been made or whether improvement of aggregate performance has occurred, the LEA is required to annually collect achievement data for each school participating in a schoolwide project. Aggregate performance and progress toward meeting desired outcomes of educationally deprived students in schoolwide projects shall be reviewed in the basic and more advanced skills addressed by the regular Chapter 1 program. The progress of those students who were identified as being educationally deprived for the purpose of distributing Chapter 1 funds to the schoolwide project is measured when determining whether the school is in need of improvement.

Q27. **If two goals of a schoolwide project relate to students' achievement in mathematics and reading and the gains in mathematics exceed the mathematics gains of other Chapter 1 project schools but the reading gains are lower than the gains in the LEA's other Chapter 1 project schools, and the gains in reading of educationally deprived children do not exceed the average gains of such children in the school for the three prior years, may that schoolwide project be allowed to continue for an additional three-year period?**

A. No. The SEA may not allow a schoolwide project to continue for an additional three-year period when the achievement gains of educationally deprived children, as measured by the means specified in the schoolwide project plan, do not exceed the average gains of participating children districtwide or of such children in that school for the three prior years. Comparisons of gains must be made for each instructional area addressed by the Chapter 1 program for the comparison group. That is, if reading and mathematics were the instructional areas addressed by Chapter 1 in the school for the three prior years, gains in reading and mathematics must be compared. Alternatively, if the LEA's program in other Chapter 1 project schools include reading and mathematics, comparisons must be made of gains in reading and mathematics.

Q28. **How may an LEA demonstrate accountability after three years of a schoolwide project in a secondary school?**

A. The LEA may demonstrate that achievement gains of educationally deprived students exceed the average gains of comparable students in the school in the three years prior to the schoolwide project or that the gains exceed the average gain of participating Chapter 1 children in the LEA as a whole. Alternatively, if achievement levels do not decline over the three-year schoolwide project period as compared with the immediate prior three-year period, the LEA may demonstrate accountability through lower dropout rates, increased retention rates, or increased graduation rates. However, satisfying the requirements for continuation of a schoolwide project does not satisfy the school improvement requirements.

Q29. **If an LEA compares achievement gains, for accountability purposes, in a schoolwide project school with the gains in other project schools, are the gains of other schoolwide project schools included in the gains for other project schools?**

A. No.

Q30. May an LEA include nationally normed test results for preschool, kindergarten, and first grade children in determining the achievement gains required under the accountability requirements in §200.36(f) for schoolwide projects?

A. No. Nationally normed achievement tests may not meet the technical standards for reliability and validity when used at the preschool, kindergarten, and first grade levels.

Schoolwide Projects and Private School Students

Q31. What private school students who reside in an area served by a schoolwide project are eligible for Chapter 1?

A. The same definition of educational deprivation used to identify educationally deprived students in the schoolwide project must be used to identify educationally deprived private school students who reside in the schoolwide project attendance area. After being identified as educationally deprived, private school students must be provided Chapter 1 services in the same grade levels as are in the schoolwide project school. For example, if the LEA serves only grades 2-3 in regular Chapter 1 schools but the schoolwide project serve kindergarten through grade 6, private school children from the schoolwide project attendance area in kindergarten through grade 6 are eligible to be served.

Q32. How does an LEA calculate how much Chapter 1 funding must be provided for services to private school students who reside in attendance area?

A. The LEA must provide for each eligible, educationally deprived private school student who resides in the schoolwide project attendance area the same amount of Chapter 1 funds that is being distributed for each educationally deprived student in the schoolwide project.

Q33. How are equitable services for private school children determined?

A. The LEA must provide Chapter 1 services to private school students based on the identified needs of those eligible students.

PARENTAL INVOLVEMENT

Statutory Requirement

Section 1016 of Chapter 1 of Title I, ESEA

Regulatory Requirement

Section 200.34

Introduction

Section 1016 of Chapter 1 implements Congress' findings that activities by schools to increase parental involvement are a vital, integral part of Chapter 1 programs. Toward this end, an LEA may receive Chapter 1 funds only if it implements programs, activities, and procedures for the involvement of parents of participating public and private school children in its Chapter 1 program. This involvement must include, but is not limited to, parental input into the planning, design, and implementation of the LEA's Chapter 1 program.

The activities and procedures for parental involvement must be planned and implemented with the meaningful consultation of parents of participating children. The consultation must be organized, ongoing, systematic, informed, and timely in relation to decisions about the program. Procedures for how this will be done throughout the life of the Chapter 1 program must be documented in written policy that the LEA makes available to the parents of participating children. To be meaningful, parental involvement must be based on adequate information that should include, on a continuing and timely basis, proposed and final applications, needs assessment documents, budgetary information, evaluation data, copies of local, State, and Federal laws, regulations, and guidelines, and any other information needed for effective involvement.

Involvement of this type requires that LEAs--

- Make Chapter 1 LEA education personnel, including pupil services personnel, available to parents;
- Convene a districtwide or building-level annual meeting of the parents of participating children as well as providing opportunities for regular meetings;
- Provide timely information about the program to parents;
- Make parents aware of parental involvement requirements and other relevant provisions of the program; and
- Provide information, to the extent practicable, in a language and form that parents can understand.

An LEA's parental involvement program must include such activities as training parents to work with their children in the home and to understand program requirements; training parents, teachers, and principals to build partnerships between home and school; and training teachers, principals, and other staff members involved in the program to work effectively with the parents of participating children.

An LEA is also required, through consultation with parents, to assess the effectiveness of parental involvement efforts and to determine if modifications are needed to increase parental participation. This assessment must be done annually.

The regulations clarify that allowable Chapter 1 costs include those to support parent conferences; resource centers; training programs, including expenditures associated with attending the training sessions; reporting to parents on children's progress; hiring, training, and utilization of parental involvement liaison workers; training of personnel, including pupil services personnel; use of parents as classroom volunteers, tutors, and aides; school-to-home complementary curriculums; assistance in implementing home-based educational activities; the provision of information on the Chapter 1 program as well as the provision of responses to parental recommendations; and the solicitation of parents' suggestions in the planning, development, and operation of the program.

Q1. **How should an LEA document parental input into the planning, design, and implementation of the Chapter 1 program?**

A. To receive Chapter 1 funds, an LEA must implement programs, activities, and written procedures for the involvement of parents of participating public and private school children. Some of the ways that this requirement can be documented are as follows:

- o A description in the project application of the consultation with parents in the development and approval of the project.
- o Agenda and minutes for activities such as the annual meeting of parents of participating children and for regular meetings of parents to obtain input into the program.
- o Schedules of training sessions designed for parents.
- o Financial records that reflect a budget and expenditures for parental involvement activities.
- o Sign-in sheets from meetings and training sessions.

Q2. **Must an LEA address its goals for parental involvement in the desired outcomes of its project application?**

A. An LEA is not required to address its goals for parental involvement in its desired outcomes. The LEA may do so, however.

Goals of Parental Involvement

Q3. **What goals must parental involvement programs and activities be designed to achieve?**

A. In coordination with parents of participating children, an LEA must develop programs and activities designed to achieve the goals listed in

§200.34(b)(1)-(7) of the regulations. These goals include keeping parents informed about the services their children receive, supporting and training parents to understand program requirements and to work with their children at home, training school personnel to work with parents, and ensuring the full participation of parents who are non-English speaking or who lack literacy skills.

Q4. Who is responsible for determining that progress toward meeting these goals is being met?

A. In consultation with parents, the LEA is required to assess annually the effectiveness of its parental involvement program and to develop plans for increased parental participation when the assessment results indicate a need. The SEA is responsibile for ensuring that an LEA meets the goals of parental involvement.

Specific Requirements

Q5. What should an LEA's written policies for parental involvement include?

A. An LEA's written policies should define--

- The procedures and types of activities for involving parents in the planning, design, and implementation of the Chapter 1 program;
- The specific goals of the LEA for its parental involvement programs and activities;
- The procedures for assessing the LEA's parental involvement program; and
- The procedures and types of activities for parental involvement in program aspects other than in the planning, design, and implementation of the Chapter 1 program, such as involving parents directly in the education of their children.

Q6. Must written policies be signed by the superintendent, the Board, and parents?

A. No. There is no Federal requirement that the policies be signed.

Q7. Is an official parent handbook required to document these written policies?

A. No.

Q8. How should the written policies be shared with staff and parents of participating children?

A. While the LEA is not required to distribute copies of the written policies to all staff and parents, it must make them available to parents of participating children and should make them available to all staff. An LEA should develop, with the involvement of parents, a method for ensuring that the policies are understood by parents.

Q9. **Should an LEA provide each parent with copies of the law and regulations?**

A. Not necessarily. However, an LEA is required to make parents aware of parental involvement requirements and other relevant provisions of the program. At a minimum, copies should be made available to parents for review.

Q10. **Must LEAs discuss the criteria for student selection and specific instructional objectives for each child with parents?**

A. Yes. An LEA must ensure that the parents of participating children are informed about the reasons why their children are participating in Chapter 1, and about the specific instructional objectives of the program as well as the methods used to achieve those objectives. In addition, the LEA must also provide the parents of participating children with reports on their children's progress and, to the extent practical, conduct a parent-teacher conference with the parents of each participating child to discuss the child's progress, placement, and methods the parents can use to complement the child's instruction.

Q11. **What "other staff" may be involved in training designed to prepare them to work effectively with the parents of participating children?**

A. Both Chapter 1 and non-Chapter 1-funded staff members who are involved in the Chapter 1 program such as counselors, nurses, speech therapists, librarians, and social workers may receive training to assist them to work effectively with the parents of participating children.

Assessment of the Parental Involvement Program

Q12. **How might an LEA assess the effectiveness of the parental involvement program, as required by section 1021(a)(4)?**

A. The Senate report accompanying Chapter 1 states that the intent of this provision "is the attempt to identify barriers to greater participation and determine possible steps to overcome those barriers, among other things, the extent to which the goals for parental involvement are being achieved." S. Rep. No. 222, 100th Cong., 1st Sess. 16 (1987). The assessment, therefore, is the extent of parental participation and how well that participation has achieved the goals the LEA set for it. These goals may be expressed in terms of student behaviors or learning, such as increased attendance rates, or may be related to the parental involvement program itself, such as increased time parents spend with their children on school-related matters or evidence of skills parents gain from the project in helping their children succeed in school.

Q12a. **What role, if any, does the annual review of parental involvement play in the determination of whether a school is in need of program improvement?**

A. That depends on what the LEA has included in its desired outcomes. LEAs may establish a desired outcome that links anticipated increases in performance to parental involvement activities. If so, failure to achieve substantial progress toward meeting a parental involvement objective could identify that school as in need of program improvement. If an LEA does not have desired outcomes related to parental involvement, the review of parental involvement might identify needed improvements, but would not place the school in program improvement.

Allowable Activities and Costs

Q13. May Chapter 1 funds be used to purchase insurance for vehicles used to transport school personnel for home visits or parents for school visits?

A. Yes. However, the allowable portion of the cost should be calculated on the basis of the percentage of time the vehicle is used for Chapter 1 home and school visits.

Q14. May Chapter 1 funds be used to pay for parents to attend training conferences on the local, State, or national level?

A. An LEA may use funds for costs that are reasonable and necessary to support the attendance of Chapter 1 parents to conferences specifically for Chapter 1 parents or to conferences providing training to enable them to participate more effectively in the local program or to conduct home-based educational activities. The LEA should develop criteria, in consultation with parents, to determine the number of parents from an LEA who may attend national meetings.

Q15. May parents be paid to attend meetings?

A. No. The statute does not authorize an LEA to pay a parent to attend a meeting or training session or to reimburse a parent for salary lost due to attendance at Chapter 1 parental involvement activities. Parental involvement expenditures are limited to costs that a parent may incur to participate.

Q16. May Chapter 1 funds be spent for food and refreshments provided during parent meetings or training?

A. Reasonable expenditures for refreshments or food, particularly when such sessions extend through mealtime, are allowable.

Q17. May Chapter 1 funds be used for members of parent advisory councils if these members are not currently the parents of participating children?

A. Yes. Funds may be used to support the activities of all members of parent advisory councils, including other interested people such as former Chapter 1 parents who have been chosen by parents of participating children.

Q18. May parents be paid as classroom aides?

A. Yes.

Q19. What kind of coordination is intended with programs funded under the Adult Education Act?

A. The Adult Education Act authorizes programs to improve the literacy skills of adults. It is possible that LEA funds available under the Adult Education Act could be used to assist parents of Chapter 1 children to increase their proficiency in basic skills and that this would enable them to participate more meaningfully in their children's education. Chapter 1 parents should be made aware of and referred to appropriate services provided through the Adult Education Act.

SERVICES FOR PRIVATE SCHOOL CHILDREN

Statutory Requirement

Section 1017 of Chapter 1 of Title I, ESEA

Regulatory Requirements

Sections 200.50-200.58, 200.60; §§76.670-76.677 of EDGAR

Introduction

Section 1017 of Chapter 1 requires that an LEA provide to eligible private school children Chapter 1 services that are equitable to the services being provided similar children attending public schools. Chapter 1 services for these children must be developed in consultation with private school officials.

Under section 1017(b)(3), the Secretary has developed written procedures to investigate and resolve complaints alleging violations of the requirement that LEAs equitably serve children attending private schools. If an LEA is unable or unwilling to provide equitable services to private school children, the Secretary institutes a bypass, arranging for delivery of services by another provider and deducting the cost of these services and arrangements from the LEA's allocation.

In the case of children attending religiously affiliated private schools, several court cases, most notably Aguilar v. Felton, have dealt with the manner in which these children may be served in light of constitutional requirements contained in the First Amendment. Most significant is the prohibition in Aguilar v. Felton against Chapter 1 personnel providing instructional services in religiously affiliated schools. The Department issued guidance on the Felton decision in August 1985, June 1986, and April 1987. That guidance is incorporated in the appropriate sections of this chapter of the Policy Manual.

Consultation

Q1. What are the requirements for consultation with private school officials?

A. Section 1017(a) of Chapter 1 requires "timely and meaningful consultation with appropriate private school officials." To meet this requirement, §200.51(a) requires an LEA to consult with private school officials before the LEA makes any decision that affects the opportunities of eligible private school children to participate in the LEA's Chapter 1 project. In other words, consultation must occur during all phases of the design and development of the LEA's Chapter 1 project, including consideration of which children will receive services, how the children's needs will be identified, what services will be offered, how and where the services will be provided, and how the project will be evaluated.

A unilateral offer of services by the LEA with no opportunity for discussion is not adequate consultation. To ensure that proper consultation and offers of equitable services are documented, the use of a form detailing the consultation and offers, with a place for the signature of private school officials, may be useful. The LEA, however, has the final responsibility for deciding how and where services will be provided.

Q2. **At what level is consultation with private school officials appropriate?**

A. Consultation with representatives of both the private school and its central administration is desirable. Private school officials should make clear to the LEA which specific officials should be included in the consultation process, and what the roles of various persons will be.

Q3. **May Chapter 1 instructional personnel consult with private school personnel?**

A. Yes. Chapter 1 teachers and other instructional personnel may consult with instructional staff from the private school in order to coordinate the Chapter 1 program with the regular classroom instructor and to facilitate the success of the services provided. Such consultation should not occur at the site of the Chapter 1 services while the services are being provided. To the extent practicable, the LEA may wish to have this consultation occur at a public school site, other neutral site, or by telephone.

Eligibility and Participation

Q4. **Which children attending private schools are eligible to receive Chapter 1 services?**

A. To be eligible to receive Chapter 1 services, a private school child must reside in a Chapter 1 project area and must meet the standard of educational deprivation the LEA uses to select students to participate in its Chapter 1 program. In conducting its needs assessment under §200.31(b), the LEA must identify educationally deprived children in all eligible attendance areas, including educationally deprived children in private schools, and must design its program on the basis of that information, including the information on educationally deprived children in private schools.

Q5. **May Chapter 1 pay for costs of selecting private school students for participation in Chapter 1?**

A. As with children attending public schools, Chapter 1 funds may not be used to identify eligible private school children. Chapter 1 funds may, however, be used to select participants from those who are eligible and determine the specific educational needs of those children.

Q6. **If providing services to private school children requires additional costs, such as those for transportation, space, or administration, do they come from the LEA's whole Chapter 1 allocation or from that part of the LEA's Chapter 1 allocation that would normally go to serve private school students?**

A. Section 200.52(a)(2) makes clear that these additional costs come from the LEA's whole allocation, so that Chapter 1 instructional services may be provided on an equitable basis to both public and private school children. (Two Federal District Courts have held that taking administrative costs "off-the-top" of the LEA's allocation is unconstitutional (Pulido v. Cavazos; Barnes v. Cavazos); however, that issue is presently on appeal. In the meantime, the regulations and guidance issued by the Department on the "off-the-top" issue remain in effect for Chapter 1 programs in all LEAs that are not the subject of the Pulido or Barnes litigation. With respect to Pulido, that District Court has stayed its ruling on the "off-the-top" issue pending appeal.)

Q7. When a child residing in a Chapter 1 attendance area in one LEA attends a private school in another LEA, which LEA, if any, is responsible to serve the child?

A. The LEA in which the child resides is responsible to provide services for the child. The LEA may, however, arrange to have services provided by another LEA, reimbursing that LEA for costs.

Q8. May an LEA establish a minimum number of private school children selected for the program in order to establish a Chapter 1 program near the private school? If so, what is the LEA's responsibility to serve children attending private schools with fewer than that minimum number?

A. Section 1017(a) of Chapter 1 and §200.50(a)(1) of the regulations require that LEAs provide for the participation, on an equitable basis, of eligible children enrolled in private schools. The requirement applies regardless of the number of children attending a private school. However, when the number of eligible children at one location is very small--generally less than 10--the cost of establishing certain types of programs to serve them may be prohibitive, especially when these children may be from several grades or have different educational needs. In this case, other options should be considered. For instance, if it is feasible and equitable, LEAs may adopt methods, such as take-home computer programs or individual tutoring programs that are cost effective to serve small numbers.

In providing services under these alternative methods, an LEA must meet the requirement in section 1017(a) of Chapter 1 that "[e]xpenditures for educational services...for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the [LEA]." For instance, assume an individual home-tutoring program is going to be provided to three students attending a private school. The LEA may compute the per pupil expenditure for Chapter 1 services being provided to pubic school students having similar educational needs, and provide for the private school children the amount of tutoring those dollars would support.

Q9. What is meant by "equitable services"?

A. Section 200.52(b)(2) contains a description of criteria to be used to determine if services offered to private school children are equitable to those being provided children attending public schools. Essentially, services are equitable if the LEA (1) assesses, addresses, and evaluates the needs and progress of both groups of children in the same manner; (2) provides, in the aggregate, approximately the same amount of instructional time and materials for children with similar needs; (3) spends an equal amount of funds to serve similar public and private school children; and (4) provides private school children an opportunity to participate in the program equitable to the opportunity provided public school children.

Q10. **What if, after making an equitable offer to serve children attending private schools, participation by these children is low?**

A. If, in spite of an offer by the LEA to provide equitable services, participation remains low, LEAs are encouraged to determine why that is so and, if appropriate, modify the project in a manner that will maximize participation by private school students. For instance, the LEA may be providing Chapter 1 services to private school children at a neutral site very near the private school and escorting the children to and from the neutral site. While the offer may provide equitable services, many eligible private school children are not participating. In an effort to increase participation, the LEA could decide, for example, to provide computer assisted instruction (CAI) for children whose parents prefer not to have them leave the private school.

Q11. **May an LEA revise its services for public school students so that they are equitable with those for private school students?**

A. Yes. In some cases it may be necessary to adjust the manner in which services are provided to public school students.

Q12. **May an LEA provide services to private school children that are not equitable to those provided to public school children, if, after receiving an offer of equitable services, private school children choose to participate in only some of the services?**

A. Both the statute and the regulations require that an LEA provide equitable services for private school children; they do not require that private school children accept or participate in all those services. The LEA must design and offer to provide services for private school children which are equitable to those being provided children attending public schools. If private school children choose to participate in only some of those services, and decline to participate in others, the LEA will have met its responsibility by providing those services in which private school children wish to participate. LEAs should continue to offer equitable services in future years, however, rather than offering only those services in which children participated in the past.

Q13. **How can equitable services for private school students be determined when the public school that children would attend is operating a schoolwide project?**

A. In this case, equitable services should be determined by comparing expenditures, since private school children must be served in a traditional Chapter 1 manner. In determining equal expenditures, both the amount of Chapter 1 dollars per child and the definition of educationally deprived child used by the LEA in the schoolwide project must be used in allocating funds to serve private school children. For instance, if the LEA allocates to the schoolwide project from Chapter 1 funds $1,000 per educationally deprived child below the 50th percentile, the same dollar allocation and definition of educational deprivation must be applied to private school children who reside in the attendance area of the schoolwide project. This is true even if, for other schools, lower cut-off scores or lower amounts per child are used.

Q14. **If an LEA implements a schoolwide project in a school that formerly served children only in grades K-3, must it now serve eligible private school children in all grades included in the schoolwide project school?**

A. Yes.

Q15. **If an LEA's application does not provide for equitable services to private school children, may an SEA approve it?**

A. No. Furthermore, the LEA has no authority to expend funds until the SEA approves the application.

Q16. **How are services to private school children to be monitored by the LEA or SEA?**

A. The LEA and the SEA must monitor services for private school students in the same way they monitor services to public school children. In addition, the SEA must ensure that LEAs provide equitable services to private school students.

Special Considerations following Aguilar v. Felton

Q17. **May Chapter 1 personnel go on the premises of religiously affiliated private schools to provide Chapter 1 instructional services?**

A. No. In Aguilar v. Felton, the Supreme Court held that Chapter 1 personnel may not provide instructional services on the premises of religiously affiliated private schools. Instructional services for those children must be provided at sites that are neither "physically nor educationally identified with the functions of the private school." See Wolman v. Walter, 433 U.S. 229, 246-47 (1977).

Q18. **May Chapter 1 personnel enter a religiously affiliated private school in order to escort private school children from their rooms to services held outside the private school and to return them to their rooms?**

A. Yes. The provision of escort services where needed is permissible as long as no instruction is occurring as the children are being escorted. Under these circumstances, the duties are noninstructional and are designed merely to protect the health and safety of the children. As noted above, the Supreme Court in Felton only prohibited Chapter 1 instructional services on the premises of religiously affiliated private schools. The Court in Wolman and previously in Everson v. Board of Education, 330 U.S. 1, 17-18 (1947), recognized that services related to the health and safety of children are permissible even if provided at religiously affiliated private schools. Therefore, the use of escorts does not raise the entanglement problems at issue in the Felton case.

Q19. **Are Chapter 1 programs on nonreligious private school premises affected by the Aguilar v. Felton decision?**

A. No.

Q20. **Does the term "teacher" as used in Aguilar v. Felton include other public school personnel?**

A. The second circuit opinion affirmed by the Supreme Court in Aguilar v. Felton forbade "the use of federal funds to send public school teachers and other professionals into religious schools to carry on instruction, remedial or otherwise, or to provide clinical and guidance services." However, the Supreme Court in an earlier case, Wolman v. Walter, distinguished the role of the diagnostician from that of the teacher or counselor with regard to services in the private school. We view testing to select children as part of diagnosis; hence, on-premises testing for student selection is not prohibited under Aguilar.

Q21. **May private school students be provided services in public schools or at neutral sites during regular school hours, before or after school, or on weekends?**

A. Yes. These options are all available, but the services must be equitable to services provided public school children.

Q22. **May private school children receive Chapter 1 services in the private school before or after regular school hours or on weekends?**

A. No.

Q23. **May private school children receive services with public school children in a summer school program?**

A. Yes, but services must be equitable to those provided public school children. To provide only summer activity for private school children, while serving public school children during both the regular term and summer, would not be equitable.

Q24. **Where may summer school services be provided?**

A. At any site allowable during the regular school year.

Q25. **Has the LEA and SEA responsibility for providing services on an equitable basis to eligible private school children changed?**

A. No, it was not changed by the Court's decision.

Q26. **If an LEA provides Chapter 1 services to private school children in the public schools, may the LEA charge Chapter 1 a reasonable amount for the space used? How are such costs allocated?**

A. Yes. Reasonable and necessary costs for public school space used for the instruction of private school students are allowable. Reasonable and necessary costs are those in excess of what the LEA would incur in the absence of Chapter 1. For example, the cost of a classroom in a building already in use would not be an excess cost. Special costs incurred in preparing and maintaining it for occupancy by Chapter 1 would be allowable.

Any such costs would be considered administrative and would come from the LEA's whole Chapter 1 allocation or from capital expense funds--not from funds used to provide instructional services to private school children.

Q27. May a private school child take onto private school premises Chapter 1 instructional materials for his or her use as part of the child's Chapter 1 program?

A. Yes.

Q28. May a neutral, third-party contractor provide Chapter 1 instructional services on the premises of a religiously affiliated private school?

A. No.

Q29. May LEAs use mobile vans or other portable units to provide Chapter 1 services to children enrolled in religiously affiliated private schools? If yes, where may an LEA place a mobile or portable unit?

A. Yes. The use of mobile or portable units for the provision of Chapter 1 services to private school children is allowable. In deciding where to place a unit, LEAs should be aware that the Supreme Court has previously held that the Establishment Clause of the First Amendment is not violated when units are located on public property near the private school. See Wolman v. Walter, 433 U.S. 229, 246-47 (1977). Such locations, as well as other locations not owned by the private school or a religious organization, are plainly acceptable sites for mobile or portable units.

The Supreme Court has not ruled on the constitutionality of placing a mobile or portable unit on property belonging to a religiously affiliated private school, and there may be differing views on this subject. (One Federal District Court has held that the placement of portable or mobile units on the property of a religiously affiliated school is unconstitutional [Pulido v. Cavazos]; however, that ruling is presently on appeal.) Given existing case law, it is the view of the Department that, under certain circumstances, mobile or portable units may constitutionally be placed on such private school property.

The Department believes that the courts would approve delivery of services in locations on private school property that fit the Supreme Court's characterization of the site that it found acceptable in Wolman v. Walter, i.e., a site "neither physically nor educationally identified with the functions of the nonpublic school." While the Court has not held that other locations are constitutionally impermissible, we believe that services at locations fitting this characterization are most likely to withstand judicial scrutiny. The Department believes that one way in which the use of a mobile or portable unit at a given location on the property of a religiously affiliated private school will comport with this standard is if the following conditions are met:

1. The property is at a sufficient distance from the private school building(s) so that the mobile or portable unit is clearly distinguishable from the private school facilities used for regular (non-Chapter 1) instruction.

2. The mobile or portable unit is clearly and separately identified as property of the LEA and is free of religious symbols.

3. The unit and the property upon which it is located are not used for religious purposes or for the private school's educational program.

4. The unit is not used by private school personnel.

In addition to the conditions stated above, an LEA may find that the following two further guidelines may bolster its decision to locate units on the property of a religiously affiliated private school:

1. Before placing a unit on private school property, the LEA can determine that other locations for the services are unsafe, impracticable, or substantially less convenient for the children to be served.

2. The public school district could enter into a lease arrangement with the private school for the use of the land owned by the private school upon which the unit is to be sited.

Q30. **What are some examples of property owned by a religiously affiliated private school that would meet the above criteria?**

A. Such property might include:

1. Land near the school that is separated from the school by an undeveloped plot of land or other terrain features and that is used neither for religious purposes nor the school's educational program.

2. A portion of a private school playground that is fenced in and has direct access to a public street.

3. Those portions of a parking lot that are not immediately adjacent to the private school.

Q31. **May a religiously affiliated private school building be used as a power source for a unit?**

A. Yes. There is nothing to prohibit public schools from arranging for power from any source. However, care must be exercised in the placement of the unit to make certain that the unit is separate from the private school building. If the use of the power source results in the need for repair, remodeling, or construction of private school facilities, Chapter 1 funds may not be used for such repair, remodeling, or construction. (See 34 CFR §200.55.)

Q32. **May the LEA pay the private school with Chapter 1 funds for the power or for leasing property?**

A. Yes. The private school, however, may not charge more than a reasonable amount as determined under local conditions.

Q33. **Who is responsible and liable for the safety of private school children during the time they walk or ride to a neutral site to be served by the Chapter 1 program?**

A. Generally, the LEA is responsible for providing for the transporting of these children to a neutral site. The question of liability, however, would be determined in accordance with State and local laws and would depend on the specific facts of the situation. Any increased cost to the LEA for having liability insurance coverage may be charged as an administrative cost to the Chapter 1 program, or to the capital expense grant.

Q34. **What can a small rural LEA with a small Chapter 1 allocation do to provide equitable services consistent with the _Felton_ decision?**

A. Rural LEAs may have special problems because of small allocations and large distances between the private schools and available locations for providing Chapter 1 services. The LEAs may wish to consider leasing rather than purchasing equipment, renting a neutral site, or using home tutoring components to provide equitable services. They may also wish to set up a joint project with neighboring LEAs, and submit a combined application.

Q35. **Did _Aguilar v. Felton_ specifically forbid instructional services provided to children in N or D institutions operated by religious groups?**

A. No. The Court did not address the unique circumstances involved in serving children in N or D institutions.

Computer Assisted Instruction

Q36. **May Chapter 1 funds be used to install necessary electrical wiring in order to operate Chapter 1 CAI programs at a private school?**

A. Yes. Reasonable installation costs are allowable under certain circumstances. In approving such costs, SEAs must be aware that §200.55 of the Chapter 1 regulations states that "[n]o funds under this part may be used for repairs, minor remodeling, or construction of private school facilities." Nevertheless, one way in which the installation would be permissible is if:

- The installation is necessary in order for the Chapter 1 program to operate;

- The cost is related solely to the CAI program and does not otherwise correct a deficiency in the facility;

- The installation does not result in any improvement to the private school facilities other than the electrical wiring related to the Chapter 1 computer(s); and

- The representatives of the private school agree either to reimburse the Chapter 1 program for the residual value of the wiring (the installation cost minus depreciation), or to have the LEA remove the wiring if the CAI program is terminated at the site.

Q37. **May Chapter 1 funds be used to provide a technician in a religiously affiliated private school to operate and maintain CAI equipment and keep order as needed in the CAI Chapter 1 classroom?**

A. Yes. A technician may be paid from Chapter 1 funds to operate and maintain the CAI equipment and keep order, but cannot provide instructional services in the religiously affiliated private school. The Supreme Court in the Felton case prohibited the provision of Chapter 1 instructional services in religiously affiliated private schools, but did not rule on the provision of technical, noninstructional services in those schools. In Wolman v. Walter, the Supreme Court upheld the provision of technical services, such as those of a diagnostician, on the premises of a religiously affiliated private school. The Court found that the nature of that relationship "does not provide the same opportunity for the transmission of sectarian views as attends the relationship between teacher and student or that between counselor and student." 433 U.S. 229, 224 (1977). Thus, the placement of a technician in a CAI Chapter 1 classroom does not raise the entanglement problems at issue in the Felton case.

Q38. **May equipment be placed on the premises of a religiously affiliated private school to provide CAI under Chapter 1 to eligible children enrolled in the school?**

A. Yes. CAI equipment may be placed on the premises of a religiously affiliated private school under certain circumstances. We believe that such a placement will withstand judicial scrutiny if the following criteria are met:

1. As with all Chapter 1 programs serving private school children, the CAI program must be under the LEA's direction and control. On-site review by public school officials must be limited, however, to such things as the installation, repair, inventory, and maintenance of equipment.

2. Private school personnel may be present in CAI rooms to perform limited noninstructional functions such as maintaining order, assisting children with equipment operations (such as

turning the equipment on and off, demonstrating the use of the computers, and accessing Chapter 1 programs), and assisting with the installation, repair, inventory, and maintenance of the equipment.

3. Neither public nor private school personnel may assist the students with instruction in the CAI room. Public school personnel may, however, assist by providing instruction through computer messages, by telephone, or by television.

4. Access to the computer equipment and the rest of the program must be limited to Chapter 1 eligible children.

5. Equipment purchased with Chapter 1 funds may not be used for other than Chapter 1 purposes. Only software directly related to the Chapter 1 program may be used with the CAI.

Q39. Does CAI by itself meet the equitability requirements of Chapter 1?

A. Eligible private school children must receive services that are equitable in comparison to the Chapter 1 services provided to public school children in terms of both the quality and the costs of the services. When both public and private school children are receiving the same CAI service, the equitable services requirement of Chapter 1 is met. When CAI is being provided to private school children while public school children are receiving direct instruction from a teacher, the question of equitability is more difficult. This may be especially true in a year after the computers were purchased since, after the initial purchase of equipment, CAI normally provides services at a cost less than the typical Chapter 1 program. (This problem may not exist, however, if the cost of the equipment is spread out over a number of years. (See the next question.)) If CAI alone does not provide services equitable to those being provided public school children, the LEA should offer additional services, such as after school tutorial sessions or appropriate summer school programs, to make the offer equitable.

Whether the services provided by an LEA to private school students are equitable to those provided to children in public school is measured by factors discussed in §200.52(b) of the regulations.

Q40. May the cost of purchasing a computer be spread out over a period of years for the purpose of meeting the equitable costs requirement?

A. The cost of a computer may be spread over a period of years by such means as leasing the equipment, arranging for a lease-purchase agreement, or by paying for the equipment in installments. The LEA may also buy the equipment with local funds, and at the time of purchase agree to have the Chapter 1 program proportionately reimburse the local funds each year.

Capital Expenses

Q41. What are capital expenses?

A. Capital expenses are expenditures for noninstructional goods and services that are incurred as a result of implementing alternative delivery systems to comply with the requirement of Aguilar v. Felton. These include the rental and renovation of space; purchase or lease of mobile vans or temporary buildings; maintenance costs; transportation; insurance; costs to escort children to and from instructional areas; and, in the case of CAI, costs to install equipment. Costs of computer equipment, like costs for other instructional tools, are instructional, not administrative costs and may not be paid for from capital expense funds.

Q42. How may an LEA use capital expense funds?

A. Funds may be used for three purposes discussed below. Specific uses in a State depend on the criteria that the State establishes to make awards to LEAs for capital expense grants.

1. To pay administrative costs the LEA will incur to increase the numbers of private school children it will serve. For instance, an LEA has been serving private school children at a nearby public school. However, valuable instructional time is lost in transporting the children by bus and, as a result, many eligible children do not participate. The LEA applies for capital expense funds to lease a portable building to place on vacant land next to the private school in order to increase the number of children who will participate in the project.

2. To reimburse the LEA for administrative costs incurred since July 1, 1985 to provide services to private school children. These funds must be used to provide services to children who were adversely affected by the LEA's expenditures for capital expenses. Thus, LEAs that took these costs "off the top" of their grants must use capital expense funds to provide Chapter 1 services to both public and private school children. If an LEA used funds set aside to serve private school students, however, then the capital expense funds may be used only to provide services to children attending private schools.

3. To pay current administrative expenses, such as transportation or lease costs, to serve private school children.

Q43. May a State, in establishing criteria for awarding capital expense funds, give priority to one purpose?

A. Yes. For instance, an SEA may decide to award capital expense funds only to increase the participation of private school children. As with other similar actions by the SEA, this decision would need to be reviewed by the committee of practitioners.

Q44. **Under §200.57(c)(1), an LEA may receive capital expense funds to be used to increase the number or percentage of eligible private school children participating in the program. What happens if, after receiving these capital expense funds, the increase the LEA expected does not take place? Must the funds be returned?**

A. Section 200.57(b)(5) requires that, in its application for capital expense funds to be used to increase participation of private school children, the LEA provide information sufficient to support the anticipated increases. If increased participation does not occur, the LEA is not required to return the funds.

Q45. **How must LEAs account for capital expense funds?**

A. Since capital expense funds are appropriated and awarded separately from basic grant funds, they must be accounted for separately. LEAs should treat capital expense funds as a separate project, and account for them in the same manner they account for any other Federal grant fund.

Q46. **Suppose an LEA incurred capital expenses in school year 1986-87 but had none in 1985-86. May it still apply for reimbursement?**

A. Yes. An LEA may apply to be reimbursed for capital expenses incurred in any year since July 1, 1985. The LEA need not have expenses in every year in order to be eligible.

Q47. **May capital expense funds be used to reimburse an LEA for local or State-funded capital expenses?**

A. Section 1017(d) only authorizes the use of capital expense funds for "capital expenses paid from funds under chapter 1 of the Education Consolidation and Improvement Act or this section...." Therefore, capital expense funds may not be used to reimburse expenditures made from State and local funds.

Complaints and Bypass

Q48. **If private school officials consider the Chapter 1 program offered by the LEA to be inequitable, what can they do?**

A. Private school officials may complain to the LEA, the State, or to the Department.

Q49. **When a private school representative files a complaint with the Department, the Department has 120 days to investigate and resolve it. When does the 120-day period begin and what constitutes resolution?**

A. Section 1017(b)(3)(A) states that the resolution must occur within 120 days of "receipt" of the complaint by the Secretary. Receipt occurs when the complaint arrives at the Department. Section 200.50(b)(2) of the regulations contains a description of what constitutes a complaint; i.e., a written and signed statement, including documentary evidence, alleging that an LEA has failed to provide equitable services to children attending private schools. If a document does not contain the required documentary evidence, the 120-day period does not begin. The

Department will inform the complainant of what is needed and, when the additional information is received, the complaint resolution period will begin. Generally, the Department will first seek information and assistance from the appropriate SEA. If the SEA is unable to satisfactorily resolve the issue, or more information is needed, the Department may conduct an on-site review. Resolution occurs when the Department issues a letter of finding--either that the LEA has or has not provided equitable services--or the matter is otherwise resolved. If the Department finds the LEA has not provided equitable services, the letter of finding will include a notice that the Department is instituting a bypass under section 1017(b) of Chapter 1.

Q50. **What procedures does the Department employ in investigating complaints received under section 1017(b)(3)(A) of Chapter 1?**

A. The Department uses the following procedures in investigating complaints:

1. Notifies the SEA of the complaint, furnishing the SEA with copies of materials supplied by the complainant.

2A. Requests the SEA to conduct an investigation and provide the Department with a report responding to the complaint.

2B. May hold a preliminary meeting with the SEA, the LEA, and the complainant to attempt to settle the issue.

3. Furnishes the complainant with a copy of the SEA's report, and requests the complainant to comment on it.

4. If the SEA's report adequately responds to the complaint or, as a result of the SEA's investigation, the LEA takes action to resolve the complaint, the Department issues a letter of resolution.

5. If the SEA's investigation reveals that the LEA is not providing equitable services to private school children, the Department issues a letter of finding to the LEA and the SEA, including notice instituting a bypass.

6. If the evidence presented by the SEA, the LEA, and the complainant is insufficient on which to make a determination, the Department conducts an additional investigation to gather more information.

7. On the basis of all information available to it, the Department issues a letter of finding.

Q51. **On what basis may a bypass be requested?**

A. Section 1017(b) of Chapter 1 and §200.60 of the regulations state that if an LEA is prohibited by law from providing, or the Secretary determines that the LEA has substantially failed to provide, equitable Chapter 1 services to private school children, the Secretary waives the requirement of the LEA and, instead, arranges for the provision of such services. A representative of a private school child may register a complaint with the Department that an LEA has substantially failed to provide Chapter 1 services; an LEA or SEA may voluntarily notify the Department that the LEA is prohibited from or unable to provide such services; or the Department through its monitoring function may determine that an LEA has substantially failed to provide equitable services. In the case of a complaint filed by a representative of a private school child, the Department has 120 days to complete its investigation and resolve the complaint.

Q52. **What are the steps leading to a Chapter 1 bypass?**

A. After a complaint is received by the Secretary and an investigation finds that an LEA has substantially failed to provide services on an equitable basis to private school children, the Secretary informs the LEA and SEA that a bypass will be invoked. The number of subsequent steps and amount of time necessary to provide services through a bypass vary depending on whether the LEA or SEA wishes to appeal. The specific steps are found in section 1017(b) of Chapter 1 and §§76.670-76.677 of EDGAR.

Q53. **Where do funds for a bypass come from?**

A. Funds are deducted from the LEA's allocation. In computing the amount to be deducted, administrative costs for both the public and private school program are calculated and deducted from the allocation. Remaining funds are allocated for public and private school children to ensure that educational services are equitable. Any increased administrative costs attributable to the bypass, therefore, are shared by both the public and private school children. The Department ensures that services are provided in a cost-effective manner.

FISCAL REQUIREMENTS

Statutory Requirement

Section 1018 of Chapter 1 of Title I, ESEA

Regulatory Requirements

Sections 200.40-200.45

To ensure that Chapter 1 funds are used to provide services that are in addition to the regular services normally provided by an LEA for children, three fiscal requirements related to the expenditure of regular State and local funds must be met by the LEA. The Act and regulations require that the LEA: (1) maintain effort; (2) provide services in project areas with State and local funds that are at least comparable to services provided in areas not receiving Chapter 1 services; and (3) use Chapter 1 funds to supplement, not supplant regular non-Federal funds.

Maintenance of Effort

An LEA may receive its full allocation of Chapter 1 funds if the SEA determines that either the LEA's per pupil expenditures or aggregate expenditures of State and local funds for free public education in the preceding year were not less than 90 percent of the expenditures for the second preceding year. If the LEA fails to meet the 90 percent level, the SEA must reduce the LEA's allocation by the exact percentage that the LEA failed to meet the 90 percent level. The SEA has the authority to waive this requirement for one year if the SEA determines that the waiver would be equitable because the failure to comply was caused by exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the LEA.

Q1. **What expenditures are included in determinations of maintenance of effort? What expenditures are excluded from the determinations?**

A. In determining whether an LEA has maintained fiscal effort, the SEA must consider the LEA's expenditures from State and local funds for free public education. Those expenditures include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities. Expenditures for community services, capital outlay, and debt service are not to be included in the determination. In addition, expenditures from funds provided under Chapters 1 and 2, ECIA, and Chapters 1 and 2 of Title I of ESEA are excluded from the determination.

Q2. **When determining whether an LEA has maintained fiscal effort, what years does an SEA compare?**

A. Expenditures in the "preceding year" are compared with expenditures in the "second preceding year." The following chart shows the years to be compared (years in parentheses are school years):

Funds First Available	Preceding Fiscal Year	Second Preceding Fiscal Year
July 1, 1989	1988 (1987-88)	1987 (1986-87)
July 1, 1990	1989 (1988-89)	1988 (1987-88)
July 1, 1991	1990 (1989-90)	1989 (1988-89)
July 1, 1992	1991 (1990-91)	1990 (1989-90)
July 1, 1993	1992 (1991-92)	1991 (1990-91)

Q3. **What happens if an LEA does not maintain fiscal effort?**

A. If in the preceding year an LEA failed to spend at least 90 percent of what it spent in the second preceding year, the SEA must reduce the LEA's Chapter 1 allocation proportionate to the LEA's failure to maintain effort. For example, if during the preceding year the LEA needed to spend $900,000 to meet the 90 percent level but only spent $850,000, the LEA failed to meet the 90 percent level by $50,000. Therefore, unless the SEA grants a waiver, the SEA must reduce the LEA's allocation by 5.6 percent (50,000 ÷ 900,000 = 5.6%).

Q4. **What is the effect of the failure to maintain effort on determinations in subsequent years?**

A. Section 200.41(b)(2) of the regulations specifies that, in determining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA shall consider the LEA's expenditures in the year the failure occurred to be no less than 90 percent of the expenditures for the third preceding year (see the following example):

Example (This example is based on an LEA with expenditures of $1,000,000 in FY 1987, $850,000 in FY 1988, $810,000 in FY 1989, $800,000 in FY 1990, and $700,000 in FY 1991.)

	1	2	3	4
Project/ Grant Year	**Expenditures first preceding year**	**Expenditures second preceding year**	**Level required to meet the requirement (90% of column 2)**	**Reduction in LEA allocation**
1989-90 (FY 1990)	$850,000 (FY 1988)	$1,000,000 (FY 1987)	$900,000	5.6% of LEA's FY 1990 allocation ($50,000/$900,000)
1990-91 (FY 1991)	$810,000 (FY 1989)	$900,000 90% of FY 1987--i.e., third preceding year--instead of FY 1988	$810,000	No reduction to FY 1991 grant
1991-92 (FY 1992)	$800,000 (FY 1990)	$810,000 (FY 1989)	$729,000	No reduction to FY 1992 grant
1992-93 (FY 1993)	$700,000 (FY 1991)	$800,000 (FY 1990)	$720,000	2.8% of LEA's FY 1993 allocation ($20,000/$720,000)

Comparability

An LEA may receive Chapter 1 funds only if it uses State and local funds to provide services in project areas that are at least comparable to the services provided in school attendance areas that are not receiving Chapter 1 funds. If the LEA selects all of its school attendance areas as project areas, the LEA must use State and local funds to provide services that are substantially comparable in each project area.

An SEA shall consider an LEA to have met the comparability requirement if the LEA either: (1) files with the SEA a written assurance that it has established and implemented a districtwide salary schedule, a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel, and a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies; or (2) establishes and implements other measures for determining compliance such as student/instructional staff ratios or student/instructional staff salary ratios. In either case, §200.43(d) of the regulations requires that an LEA develop written procedures to ensure that comparable services are provided and demonstrate that the procedures if implemented, in fact, achieve comparability.

An LEA must maintain annual records documenting compliance with the comparability requirement, and the SEA must monitor each LEA's compliance with the requirement.

Q5. **If an LEA chooses to measure compliance with the comparability requirement by comparing student/instructional staff ratios or student/instructional staff salary ratios, which staff members should be included as "instructional staff"?**

A. If the LEA chooses to measure compliance by comparing staff ratios or staff salary ratios, the LEA must consistently include the same staff members in the ratios for both project schools and the comparison group. Instructional staff should include teachers and administrators; other personnel assigned to schools to provide direct instructional services such as music, art, and physical education teachers, guidance counselors, speech therapists, librarians, and instructional aides; and other personnel who provide services that support instruction such as school social workers, psychologists, and instructional secretaries.

Q6. **If all school attendance areas in an LEA or in a grade span grouping are designated as project areas, must the LEA demonstrate that the project areas are providing comparable services?**

A. Yes. Section 200.43(a)(2) of the regulations requires that if the LEA selects all of its school attendance areas as project areas, the LEA must use State and local funds to provide services that are substantially comparable in each project area. For example, the LEA, in order to establish a comparison to determine that services are "substantially comparable," may calculate ratios for the group of schools serving project areas with the lowest percentage or numbers of children from low-income families. The ratio for each of the other project schools would then be compared with the average calculated for the comparison group of project schools. The same 10 percent variances as provided in §200.43(c)(1) of the regulations would be used.

Q7. **The regulations provide that comparability may be determined on a districtwide or grade span basis. Are there limitations on the number of grade spans an LEA may use?**

A. No. However, the number should match the basic organization of schools in the LEA. For example, if the LEA's organization includes elementary, junior high, and senior high schools, the LEA would have three grade spans.

Q8. **In addition to grade span groupings, does the LEA have the option to divide grade spans into a large school group and a small school group?**

A. Yes, but there must be a significant difference in the enrollments of schools within the grade span--for example, the largest school in a grade span with an enrollment that is two times the enrollment of the smallest school in the grade span.

Q9. **What records does an LEA maintain to document compliance with the comparability requirement?**

A. If the LEA files a written assurance that it has established and implemented a districtwide salary schedule and policies to ensure equivalence among schools in staffing and in the provision of materials and supplies, it must keep records to document that the salary schedule and policies were implemented and that equivalence was achieved among schools in staffing, materials, and supplies.

If the LEA established and implemented other measures for determining compliance with the requirement such as student/instructional staff ratios, it must maintain source documentation to support the calculations and documentation to demonstrate that any needed adjustments to staff assignments were made to meet the allowable variations.

Q10. **When should an LEA determine whether its project schools meet the comparability requirement?**

A. Specific dates for determining compliance with the comparability requirement are not included in the Act or the regulations. However, section 1018(c) of Chapter 1 and §200.43(a) of the regulations provide that an LEA may receive funds under Chapter 1 only if it complies with the comparability requirement. Moreover, if an LEA is found not to be in compliance with the requirement, funds are to either be withheld from the LEA or repaid by the LEA. Whether funds are withheld or repaid depends on when the violation is determined. Because the purpose of the comparability requirement is to ensure that project schools receive the same level of services from State and local funds as other schools, determinations must be made as early as possible in the school year. Early determinations will preclude an LEA from having to subsequently refund amounts for failure to comply. In accordance with the authority for State regulations in §200.70 of the regulations, the SEA may establish timelines for comparability determinations and for implementing any required corrective actions.

Q11. **What are the SEA's responsibilities for monitoring the comparability requirement?**

A. The Act and the regulations require that the SEA monitor each LEA's compliance with the comparability requirement. Methods for monitoring are not specified. Therefore, each SEA has the flexibility to determine how best to carry out the monitoring responsibility. This could include reviews of the written procedures required by §200.43(d) of the regulations, including determinations that the procedures actually achieve comparability; reviews of the records maintained to document compliance; and onsite verification that comparable services are provided with State and local funds in project areas. The SEA, however, is ultimately responsible for ensuring that its LEAs remain in compliance with the comparability requirement. In addition, the SEA must withhold funds or require refunds from LEAs that fail to comply with the comparability requirements.

Supplement, Not Supplant

An LEA may use Chapter 1 funds only to supplement and, to the extent practical, increase the level of funds that would, in the absence of Chapter 1 funds, be made available from non-Federal sources for the education of children participating in Chapter 1 projects. In no case may Chapter 1 funds be used to supplant funds from non-Federal sources. To meet this requirement, an LEA is not required to provide Chapter 1 services using a particular instructional method or in a particular instructional setting.

Q12. **What are some project designs that meet the supplement, not supplant requirement?**

A. Common project designs include in-class, extended pull-out, replacement, add-on, and limited pull-out models. If implemented properly, each model can conform to the supplement, not supplant requirement.

Q13. **What are the characteristics of an in-class project?**

A. An in-class project provides instructional services for participating children in the same setting and within the time period they would receive instructional services if they were not participating in the Chapter 1 project. An in-class project meets the supplement, not supplant requirement if--

- o The project is designed to meet Chapter 1 participants' special educational needs;

- o The classroom teacher who would be responsible for the provision of instructional services to participating children in the absence of Chapter 1 remains responsible for, and continues to perform, those duties the teacher would be required to perform in the absence of Chapter 1, including planning the regular instructional program of participating children, providing them with instructional services, and evaluating their progress; and

- o Instructional staff members paid with Chapter 1 funds work closely with the classroom teacher, who is ultimately responsible for the provision of instructional services to participating children in the absence of Chapter 1, so as to provide services that are designed to meet participants' special educational needs.

Example: An LEA wishes to provide a special program of remedial instruction using a teacher aide for ten high school juniors assigned to one business math class and for five high school sophomores in a separate compensatory mathematics class that meets at the same time. The teacher aide spends half of each class period in each class, working individually with Chapter 1 participants to provide tutorial assistance on an as-needed basis. Such a project satisfies the supplement, not supplant requirement if the classroom teacher, who would be responsible for providing instruction to the participating children in each case, continues to be responsible for tasks such as lesson planning and basic instruction, and meets with the teacher aide on a regular basis to ensure that the Chapter 1 participants are receiving a program of instruction that meets their individual needs.

Example: An LEA wishes to provide a special program of remedial instruction for up to one hour per day to Chapter 1 students using the regular classroom teacher. Where normally a maximum of five teachers are required to be hired (for a 1:20 ratio) to instruct a particular number of students in one grade, six teachers are hired. Each of the six teachers is assigned a class in which about five students are Chapter 1 students. Each of the six teachers spend up to one hour per day providing Chapter 1 services exclusively to the Chapter 1 students in one section of the room while a volunteer or aide oversees the other students in another part of the room. For the portion of time the teachers spend with the Chapter 1 students exclusively, their salaries are charged to Chapter 1. Collectively, the portions of time should equal one full-time equivalent (FTE) teacher's salary charged to Chapter 1.

Example: An LEA wishes to provide a special program of remedial instruction for up to one hour per day to Chapter 1 students using the regular classroom teacher in the regular classroom. For example, five regular teachers are provided by the LEA to teach the students at one grade level for a five-hour instructional day. An additional teacher is hired by the LEA to rotate among the five classrooms for one hour in each classroom and replace the regular classroom teacher for that period. During the time the rotating teacher is in a classroom, the regular teacher provides intensive instruction for the Chapter 1 students to meet their special educational needs that is in addition to the services the students would receive if there were no Chapter 1 services. The rotating teacher takes over the regular program of instruction with the remaining students. Either each regular teacher's salary could be charged to Chapter 1 for the portion of the time the teacher spends solely with Chapter 1 students, or the salary of the additional teacher hired to rotate among the five classes could be charged to Chapter 1.

Both the second and third examples above would allow for smaller regular classroom loads and continuity in and maximum coordination of the Chapter 1 students' education. These examples would comply with the supplement, not supplant requirement if (1) for the time spent with Chapter 1 students, the regular teacher is formally relieved of responsibility for other students, and spends time exclusively with the Chapter 1 students, (2) the proportion of the salary costs paid by Chapter 1 is equal to the actual portion of each regular teacher's total work day spent providing Chapter 1 services, (3) the Chapter 1 services are supplemental to the regular program, designed to meet the students' special educational needs, and the Chapter 1 students receive all services they otherwise would receive in the regular program, and (4) the regular teacher keeps time distribution records to show the actual time spent providing supplemental benefits for Chapter 1 students. (See Q3. of the Uses of Funds section of this policy manual.)

Q14. **What are the characteristics of extended pull-out and replacement projects?**

A. An extended pull-out project or a replacement project provides Chapter 1 services for a period of time that exceeds 25 percent of the time--

computed on a per day, per month, or per year basis--that a participating child would, in the absence of Chapter 1 funds, spend receiving instructional services from a particular teacher of a required or elective subject who is paid with other than Chapter 1 funds. An extended pull-out or a replacement project meets the supplement, not supplant requirement if the Chapter 1 services have all of the following characteristics:

- Chapter 1 services are provided to participating children in a different classroom setting or at a different time than would be the case if these children were not participating in the Chapter 1 project.

- The Chapter 1 project provides services that replace all or part of the course of instruction regularly provided to Chapter 1 participants with a program that is particularly designed to meet participants' special educational needs.

- The LEA provides from funds other than Chapter 1 either the FTE number of staff that would have been provided for the services replaced by the Chapter 1 project or the funds required to provide the number of staff.

  In calculating the FTE number of staff the LEA must provide from funds other than Chapter 1, the following principles apply:

  1. If an extended pull-out or replacement project operates in more than one school, the appropriate staff to be provided from other than Chapter 1 funds must be determined in the aggregate for all the schools implementing the project.

  2. If more than one extended pull-out or replacement project is implemented by the LEA, e.g., one in mathematics and one in reading, the appropriate staff to be provided from other than Chapter 1 funds must be calculated separately for each replacement project. The calculation, however, must be determined in the aggregate for all schools within each replacement project.

  3. The LEA is not required to provide fractional parts of an FTE staff member for an extended pull-out or replacement project. However, the dropping of fractional parts of FTEs must be done for calculations across an entire extended pull-out or replacement project rather than on an individual school basis.

Elementary School (self-contained) - Example 1

This example pertains to an LEA that has one school implementing a language arts replacement project.

Items to know before calculating the resources the LEA is required to provide are as follows:

- o Average class size for a full-time teacher in that school.
- o Number of minutes per day a full-time teacher provides instruction.
- o Number of children to be served by the replacement project.
- o Number of minutes per day that language arts is taught in the regular program.

Let the average class size be 25, the number of minutes a teacher teaches per day be 300, the number of students to be served be 75, and the number of minutes language arts is taught per day be 120.

- Calculate the percent of time per day that the students will participate in the replacement project by dividing the number of minutes the students will be served by the total number of minutes a day a full-time teacher provides instruction.

  $\frac{\text{120 minutes}}{\text{300 minutes}}$ = .4 or 40% of a school day

- Calculate the number of students a teacher would teach for 40 percent of the day by multiplying that percent of the day by the number of Chapter 1 students to be served.

  75 Chapter 1 students x 40% = 30 students

- Calculate the number of FTE teachers to be provided by the LEA by dividing the number of students calculated above by the average regular class size.

  $\frac{\text{30 students}}{\text{25 students}}$ = 1.2 FTE teachers

  Since the fractional portion of an FTE can be dropped, the LEA must contribute resources equal to 1 full-time teacher.

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Elementary School (self-contained) - Example 2

This example pertains to an LEA that is going to implement a language arts replacement project and a mathematics replacement project in one school.

Items to know before calculating the resources the LEA is required to provide are as follows:

- o Average class size for a full-time teacher in that school.
- o Number of minutes per day a full-time teacher provides instruction.
- o Number of children to be served by the language arts replacement project.
- o Number of children to be served by the mathematics replacement project.

- Number of minutes per day that language arts is taught in the regular program.
- Number of minutes per day that mathematics is taught in the regular program.

Let the average class size be 25, the number of minutes a teacher teaches per day be 300, the number of students to be served in language arts be 75, the number of students to be served in mathematics be 40, the number of minutes language arts is taught per day be 120, and the number of minutes per day mathematics is taught be 70.

Language Arts

- Calculate the percent of time per day that the students will participate in the language arts replacement project, by dividing the number of minutes the students will be served by the total number of minutes a day a full-time language arts teacher provides instruction.

  $\frac{\text{120 minutes}}{\text{300 minutes}}$ = .4 or 40% of a school day

- Calculate the number of students a teacher would teach for 40 percent of the day by multiplying that percent of the day by the number of Chapter 1 students to be served.

  75 Chapter 1 students x 40% = 30 students

- Calculate the number of FTE teachers to be provided by the LEA by dividing the number of students calculated above by the average regular class size.

  $\frac{\text{30 students}}{\text{25 students}}$ = 1.2 FTE teachers

Mathematics

- Calculate the percent of time per day that the students will participate in the mathematics replacement project by dividing the number of minutes the students will be served by the total number of minutes a day a full-time mathematics teacher provides instruction.

  $\frac{\text{70 minutes}}{\text{300 minutes}}$ = .233 or 23% of a school day

- Calculate the number of students a teacher would teach for 23 percent of the day by multiplying that percent of the day by the number of Chapter 1 students to be served.

  40 Chapter 1 students x 23% = 9.2 students

- Calculate the number of FTE teachers to be provided by the LEA by dividing the number of students calculated above by the average regular class size.

  $$\frac{9.2 \text{ students}}{25 \text{ students}} = .37\ (.368)\ \text{FTE teachers}$$

Total Resources the LEA Must Provide

1.2 FTE language arts teachers
.37 FTE mathematics teachers

The LEA determines required resources separately for each subject. The LEA must contribute resources equal to one full-time teacher, since the fractional parts of the language arts teachers and mathematics teachers can be dropped.

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Secondary School - Example 1

This example pertains to an LEA that has one school implementing a language arts replacement project.

Items to know before calculating the resources the LEA is required to provide are as follows:

- o Average language arts class size for a full-time teacher.
- o Number of periods a day a full-time language arts teacher teaches.
- o The number of children to be served by the replacement project.

Let the average class size be 30, the number of periods a language arts teacher teaches per day be 5, and the number of students to be served be 300.

- A full-time teacher would normally teach 150 students per day.

  30 students x 5 periods = 150 students

- To calculate the resources the LEA must contribute, divide the number of Chapter 1 students to be served by the number of students a full-time teacher would teach during the day.

  $$\frac{300 \text{ Chapter 1 students}}{150 \text{ students}} = 2$$

  The LEA must contribute resources to equal 2 full-time teachers.

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Secondary School - Example 2

This example pertains to an LEA that has more than one school implementing an English replacement project.

Items to know before calculating the resources the LEA is required to provide are as follows:

- o Average districtwide English class size for a full-time teacher.
- o Average number of periods a day a district English teacher teaches.
- o The number of children to be served by the English replacement project.

Let the average class size be 28, the number of periods an English teacher teaches per day be 5, and the number of students to be served by Chapter 1 be 60 students in one school and 80 students in another school, or a total of 140 students.

- A full-time English teacher would normally teach 140 students per day.

  28 students x 5 periods = 140 students

- To calculate the resources the LEA must contribute, divide the number of Chapter 1 students to be served by the number of students a full-time teacher would teach during the day.

  $\frac{140}{140} = 1$

  The LEA must contribute resources to equal 1 full-time teacher.

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Secondary School - Example 3

This example pertains to an LEA that has one school implementing a mathematics replacement project. This mathematics replacement project will be conducted in the eighth and ninth grades. Teachers of ninth grade students are required to have larger classes than teachers of eighth grade students.

Items to know before calculating the resources the LEA is required to provide are as follows:

- o Average mathematics class size for eighth grade teachers.
- o Average mathematics class size for ninth grade teachers.
- o Number of periods a day a full-time mathematics teacher teaches.
- o The number of eighth grade students to be served by the replacement project.
- o The number of ninth grade students to be served by the replacement project.

Let the average eighth grade mathematics class size be 30, the number of periods a day a teacher teaches be 5, and the number of eighth grade students to be served by Chapter 1 be 75.

- A full-time teacher would normally teach 150 students per day.

  30 students x 5 periods = 150 students

- To calculate the resources the LEA must contribute for the eighth grade portion of the replacement project, divide the number of Chapter 1 eighth grade students by the number of students an eighth grade mathematics teacher would teach during the day.

$$\frac{75}{150} = .5$$

Let the average ninth grade mathematics class size be 35, the number of periods a day a teacher teaches be 5, and the number of ninth grade students to be served by Chapter 1 be 100.

- A full-time teacher would normally teach 175 students per day.

  35 students x 5 periods = 175 students

- To calculate the resources the LEA must contribute for the ninth grade portion of the replacement project, divide the number of Chapter 1 ninth grade students by the number of students a ninth grade mathematics teacher would teach during the day.

$$\frac{100}{150} = .57$$

Add .5 and .57 = 1.07 Since the LEA may drop the fractional portion, it must contribute resources equal to 1 FTE staff.

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Q15. What are the characteristics of an add-on project?

A. An add-on project provides Chapter 1 services at a time that participants would not be receiving State or locally funded instructional services, including periods such as study halls, before or after the regular school day, weekends, or vacation periods. The project meets the supplement, not supplant requirement if the project is designed to meet participants' special educational needs.

Q16. What are the characteristics of a limited pull-out project?

A. A limited pull-out project provides instructional services for participating children in a different setting or a different time than would be the case if those children were not participating in the Chapter 1 project. Services are provided for a period of time that does not exceed 25 percent of the time--computed on a per day, per month, or per year basis--that a participating child would, in the absence of Chapter 1 funds, spend receiving instructional services from teachers of required or elective subjects who are paid with other than Chapter 1 funds. A limited pull-out project meets the supplement, not supplant requirement if all of the following characteristics are met:

- o The project is particularly designed to meet participants' special educational needs.

- The classroom teacher, who would be responsible for the provision of instructional services to participating children in the absence of Chapter 1, remains responsible for, and continues to perform, those duties the teacher would be required to perform in the absence of Chapter 1, including planning the instructional program of the participating children, providing them with instructional services, and evaluating their progress.

- Instructional staff members paid with Chapter 1 funds work closely with the classroom teacher, who is ultimately responsible for the provision of instructional services to participating children in the absence of Chapter 1, so as to provide services that are particularly designed to meet participants' special educational needs.

Example: Fifty third graders participate in a Chapter 1 project designed to help them improve their reading skills. All the children receive instruction in reading from their classroom teacher as part of their regular program of instruction. Under the Chapter 1 project, a special resource center is staffed by personnel paid with Chapter 1 funds; Chapter 1 participants are pulled out of class for one-half hour, five days per week to receive special assistance at the resource center. The time spent in the resource center totals 2.5 hours, or 12.5 percent of the 20 hours of instructional time the 50 participating children spend with their classroom teacher as part of their regular program of instruction. This project does not violate the supplement, not supplant requirement so long as the classroom teacher whose instruction the Chapter 1 project is designed to supplement continues to remain responsible for the regular program of instruction that is provided to the participating children and performs regular planning, instructional, and evaluative duties associated with those children. The classroom teacher must also work with those children and with the resource center personnel to ensure that a coordinated program of instruction is provided so as to meet the special needs of Chapter 1 participants.

Q17. How can an LEA provide Chapter 1 service for handicapped children without violating the supplement, not supplant requirement?

A. Section 1014(d) of Chapter 1 and §200.31(c)(5)(iii) of the regulations provide that an LEA may not use Chapter 1 funds to provide services that are required by Federal, State, or local law to overcome children's handicapping conditions. Therefore, services that must be provided for children because of their handicap (for example, services required by the Education of the Handicapped Act) may not be paid for with Chapter 1 funds. An LEA may provide services for handicapped children that comply with the supplement, not supplant requirement if the Chapter 1 services have all of the following characteristics:

- The LEA designs the Chapter 1 project to address special needs resulting from educational deprivation, not needs relating to children's handicapping conditions.

- The LEA sets overall program objectives that do not distinguish between handicapped and non-handicapped participants.

- The LEA selects handicapped children for Chapter 1 services on the basis of educational deprivation, not on the basis of handicap, and the LEA selects those handicapped children who can be expected to make substantial progress toward accomplishing project activities without substantially modifying the educational level of the subject matter.

- The LEA provides the same services to address children's handicapping conditions from non-Chapter 1 funds that are provided for handicapped children in nonproject schools.

- The LEA provides Chapter 1 services at intensities taking into account the needs and abilities of individual participants, but without distinguishing generally between handicapped and non-handicapped participants with respect to the instruction provided.

- The LEA provides for maximum coordination between the Chapter 1 services and the services provided to address the children's handicapping conditions in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the children's programs. Some examples of how this can be achieved are listed below.

Examples of Chapter 1 Services for Handicapped Students

1. In-class

An educational aide, tutor, or teacher can provide supplemental instructional assistance to Chapter 1 students who may also be handicapped during their mainstreamed instructional activities. For example, if a handicapped student has been determined to be educationally deprived in language arts, the in-class tutor can provide assistance during the time the student is mainstreamed into language arts activities. This in-class tutor can work with all those in the language arts class who have been identified as eligible for and selected to receive Chapter 1 services. In this manner, there is maximum coordination with the regular classroom teacher since services are provided in the regular classroom and the handicapped students are not segregated from non-handicapped students when Chapter 1 services are provided.

2. Multiple-funded teacher

A special education teacher can be multiple funded by special education funds and Chapter 1 funds in order to teach handicapped students for a portion of the day and Chapter 1 students for a portion of the day. In the portion of the day during which the teacher will work with Chapter 1 students, the teacher would be working with some of the handicapped students who were identified as eligible for and selected to receive Chapter 1 services. In this manner, there would be automatic coordination for those students in special education and Chapter 1 since the same teacher would be providing both services. This teacher could then spend sufficient time with the regular teachers for coordinating Chapter 1 and regular services for those non-handicapped Chapter 1 students.

Q18. How can an LEA provide Chapter 1 services for children with LEP without violating the supplement, not supplant requirement?

A. Section 1014(d) of Chapter 1 and §200.31(c)(5)(iii) of the regulations provide that an LEA may not use Chapter 1 funds to provide services that the LEA is required to provide for children with LEP under Federal or State law, including provisions required by Lau v. Nichols. The level of services necessary to meet Federal or State requirements must be provided from non-Chapter 1 sources. An LEA may use Chapter 1 funds to provide services for children with LEP that comply with the supplement, not supplant requirement if the Chapter 1 services have all of the following characteristics:

- The LEA designs its Chapter 1 project to address special needs resulting from educational deprivation, not needs relating solely to the children's LEP.
- The LEA sets overall project objectives that do not distinguish between participants of LEP and other participants.
- Through the use of uniform criteria, the LEA selects children for participation on the basis of educational deprivation, not on the basis of LEP.
- The LEA provides Chapter 1 services taking into account the needs and abilities of individual participants. The LEAs may use Chapter 1 funds to provide staff who are bilingual and secure appropriate materials, when such staff and materials are necessary to address the educational deprivation of children to be served. Some examples of how this can be achieved are listed below.
- The LEA provides for maximum coordination between the Chapter 1 services and the services provided to address the children's LEP in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the children's programs.

Q18A. How can an LEA determine when it must use State and local resources to provide services for Chapter 1 LEP children?

A. There are several ways to make this determination:

1. Any services required by a court order or agreement with the Office for Civil Rights.
2. Any services that may be required by State law or regulation. For instance, if the State requires that LEP children receive at least one hour of instruction daily in English as a second language (ESL), this must be provided with funds other than Chapter 1.
3. Any services required by local law, policy, or regulation.

4. Services similar to those being provided to LEP children not in the Chapter 1 program. For instance, LEP children in non-Chapter 1 schools receive one hour daily of special instruction in English; this must also be provided to Chapter 1 LEP children prior to any additional services the children might receive under Chapter 1.

Finally, the Lau decision requires LEAs to take steps to overcome the barriers posed by students' LEP. In addition, the Equal Opportunities Act of 1974 requires each educational agency "to take appropriate action to overcome barriers that impede equal participation by its students in its instructional programs." Therefore, in no instance should LEP children be receiving special services solely from Chapter 1.

Examples of Chapter 1 Services for LEP Students

1. In-class

   In instances where there is one primary language spoken by LEP students--Spanish, for example--a Spanish-English speaking bilingual teacher, educational aide, or tutor can provide supplemental instructional assistance to the LEP students in the classrooms of the instructional areas the students have been identified as educationally deprived. In this manner the Chapter 1-funded bilingual instructor will be in continual contact with the regular teachers to coordinate Chapter 1 and regular services.

2. In instances where there are several languages spoken by LEP students, a teacher, educational aide, or tutor who is trained to teach ESL can provide supplemental instructional assistance to students in the classrooms of the instructional areas the students have been identified as educationally deprived. The ESL and regular teacher can continually coordinate Chapter 1 and regular services.

Exclusion of Special State and Local Program Funds from Comparability and Supplement, not Supplant Requirements

An LEA may exclude State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children when determining compliance with the comparability and supplement, not supplant requirements. If funds are expended for conducting a State program, the Secretary must grant a written, advance determination that the State program meets the five requirements set forth in section 1018(d)(1)(B) of Chapter 1. If funds are expended for conducting a local program, the State must grant a written, advance determination that the local program meets these five requirements.

Q19. **What are the five requirements that must be met in order to receive a written determination allowing the exclusion of State or local funds?**

A. The Secretary shall consider a State program, and an SEA shall consider a local program, to be similar to Chapter 1 programs if--

   1. All children participating in the program are educationally deprived;

2. The program is based on similar performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives;
3. The program provides supplementary services designed to meet the special educational needs of the children who are participating;
4. The LEA keeps such records and affords access thereto as are necessary to assure the correctness and verification of these requirements; and
5. The SEA monitors performance under the program to ensure that these requirements are met.

Q20. **What is the purpose of allowing the exclusion of local or State funds expended on State or local compensatory education programs from determinations of compliance with the Chapter 1 supplement, not supplant requirement?**

A. The exclusion allows State and local compensatory education funds to be used to further extend services similar to those provided by Chapter 1 to educationally deprived students without requiring such funds to be distributed equitably among Chapter 1 and non-Chapter 1 students. Chapter 1 funds may not provide students with services that the State or local program funds are required to provide.

Q21. **How may excludable special State and local compensatory funds be used with Chapter 1 funds to meet the needs of educationally deprived students without violating the Chapter 1 supplement, not supplant requirement?**

A. An LEA's Chapter 1 program, for example, provides reading services at Chapter 1 project schools to students in grades K-3 who performed at or below the 25th percentile on the reading portion of a standardized test. The excludable State (or local) compensatory education program funds provide reading services at nonproject schools to like students.

Q22. **When should advance determinations be requested in relation to when comparability is determined?**

A. Advance determinations should be requested of the Secretary and the SEA (as appropriate) before or as soon as possible during the project year for which such determinations are being made so that the LEA seeking to exclude State and local funds can compensate for potential instances of supplanting or noncomparability, if any, in order to meet its fiscal responsibilities.

Q23. **May an LEA exclude State and local funds expended for bilingual education for LEP children, special education for handicapped children, and certain State phase-in programs when demonstrating compliance with the supplement, not supplant requirement?**

A. No. The LEA may only exclude these funds for the purpose of demonstrating compliance with the comparability requirement.

EVALUATION

Statutory Requirements

Sections 1019 and 1435 of Chapter 1 of Title I, ESEA

Regulatory Requirements

Sections 200.35 and 200.80-200.89

Introduction

Section 1019 of Chapter 1 provides the requirements for State and local evaluations of Chapter 1 Basic Grant programs. Section 1435 of Chapter 1 provides the statutory basis for the development of national standards to be implemented in conducting Chapter 1 evaluations.

Local Evaluations--General Requirements

Section 1019(a) of Chapter 1 and §200.35(a) of the regulations require that every LEA evaluate the effectiveness of the program in meeting desired outcomes stated in the LEA application; implement the national standards developed under section 1435; evaluate program effectiveness at least once every three years (or more frequently if required to do so by the SEA); use objective measures; measure individual student achievement in basic skills and more advanced skills; aggregate individual student achievement by grade and subject in basic and more advanced skills for the LEA as a whole; submit the results to the SEA at least once every three years; determine if the effect of the program is sustained over more than one program year; and review Chapter 1 children's progress in the regular school program.

Q1. Are Chapter 1 preschool, kindergarten, and first grade programs exempt from evaluation?

A. No. Chapter 1 programs for students in these grades are exempt only from collecting aggregatable achievement results using the national standards. LEAs are required to evaluate the effectiveness of such programs using the desired outcomes stated in their program applications.

Q2. Must the LEA evaluate its Chapter 1 project in terms of both aggregate student achievement and desired outcomes?

A. Yes. LEAs must evaluate their Chapter 1 projects on the basis of aggregate student achievement collected in accordance with national standards and other desired outcomes as stated in the LEA application.

Q3. May an LEA establish a minimum amount of participation in the project a child must have to be included in its evaluation?

A. All students who were enrolled in the project for the entire school year and for whom the LEA has obtained pre- and post-test scores must be included in the evaluation, even if some of those students were absent during some of the time the project operated. However, students who enrolled in the project well into the school year need not be included, even if the LEA has pre- and post-test scores on them.

Q4. **An LEA is required to conduct and report an evaluation of its Chapter 1 program only once every three years. Must it collect data on aggregate student achievement and progress toward meeting other desired outcomes every year?**

A. Yes. Although Chapter 1 requires that the LEA conduct and report an evaluation only once every three years, for purposes of program improvement, the LEA must conduct an annual local review of the effectiveness of each Chapter 1 school's project as measured by aggregate performance and desired outcomes.

Q5. **Must the LEA evaluate student achievement using an annual testing cycle?**

A. Yes. Student achievement must be evaluated on a spring-to-spring or fall-to-fall testing cycle.

Q6. **Must an LEA conduct a sustained effects study as part of its evaluation responsibilities?**

A. Yes. An LEA must conduct a sustained effects study that examines whether Chapter 1 effects are sustained over a period of more than one program year. It must assess the performance of the same children for at least two consecutive 12-month periods, provided the children remain within the LEA.

Local Evaluations--Desired Outcomes

Both Chapter 1 (sections 1012(b) and 1021) and the regulations (§200.35-(a)(1)(i)(A)) require that the effectiveness of Chapter 1 programs be evaluated based on aggregated student achievement following the national standards and desired outcomes stated in the LEA application.

Q7. **What are desired outcomes?**

A. Desired outcomes are an LEA's goals to improve educational opportunities of educationally deprived children so that they (1) succeed in the regular classroom; (2) attain grade level proficiency; and (3) improve in basic and more advanced skills.

Desired outcomes must be stated in an LEA's Chapter 1 application in terms of the basic and more advanced skills that all children are expected to master.

Q8. **How are desired outcomes expressed?**

A. Desired outcomes must be expressed in terms that can be measured. At a minimum they must be expressed in terms of aggregate performance, i.e., show improvement in aggregate performance of children over a 12-month period (except preschool, kindergarten, and first grade programs) in basic and more advanced skills that all children are expected to master in an instructional area. However, to achieve a more complete picture of the success of the Chapter 1 program in its schools, an LEA is encouraged to state other desired outcomes expressed in terms of indicators, such as improved student performance on criterion-referenced tests (CRTs), lower dropout rates, improved attendance, or fewer retentions in grade. All desired outcomes must relate to improved performance in basic and more advanced skills.

Q9. **Must desired outcomes be evaluated and results reported?**

A. Each desired outcome must be evaluated by the LEA, using methods appropriate to the way the desired outcome is stated. Results of the evaluations must be reported to the SEA at least once every three years.

Q10. **What part do desired outcomes play in determining the need for program improvement activities?**

A. For each project school, an LEA must annually review effectiveness on the basis of aggregate performance and substantial progress toward meeting desired outcomes.

Failure to make substantial progress toward meeting desired outcomes will require school program improvement activities regardless of the results of aggregate performance. In other words, a school that does not make substantial progress annually on the stated desired outcomes will be required to develop a program improvement plan.

Q11. **Are desired outcomes used differently for projects serving special groups of students?**

A. Desired outcomes are used in the same way in all LEA Chapter 1 projects, i.e., as part of the local annual review for program improvement and for evaluation at least once every three years.

In projects serving preschool, kindergarten, and first grade students, other desired outcomes are the only basis for annual review and evaluation. The same is true for projects designed primarily to teach English to students with LEP whose performance cannot be validly and reliably assessed with norm-referenced tests (NRTs).

Q12. **Other than NRTs, are there examples of objective measures that an LEA might use to assess progress toward desired outcomes?**

A. A variety of instrumentation and data may be considered as objective measures. Obviously, the data obtained and reviewed should reflect the goals and objectives of the programs involved. Care, however, should be taken to ensure validity and reliability in data collection, analysis, and interpretation.

Criterion-referenced tests might be used to provide information about attainment of particular skills. Performance tests, such as writing assessments, might be used. Like other measures, performance assessments must be reliable and valid. Teacher rating scales may provide data on student performance. Trends in dropout or attendance rates might be used in secondary schools to identify the impact of projects seeking to improve the graduation rates for students with deficits in basic and advanced skills. Improved grades received by students may also be used as a desired outcome.

Local Evaluations--Norm Referenced Testing

Section 1435 of Chapter 1 requires the development of national standards for the local evaluation of Chapter 1 programs. Sections 200.80-200.89 of the regulations present these national standards. One of the main features of these standards is the requirement that achievement be measured over a 12-month period with a norm-referenced achievement test in reading, mathematics, or language arts for students in grades 2-12.

Q13. **Why must an LEA use a norm-referenced achievement test or one that can be equated to an NRT to evaluate the achievement of Chapter 1 students in grades 2-12 receiving services in reading, mathematics, or language arts?**

A. The national standards require the LEA to calculate achievement gains for students in grades 2-12 who receive services in reading, mathematics, or language arts for local review purposes and so that Chapter 1 data from across the Nation can be aggregated to determine the overall impact of the program. This is accomplished by comparing their actual post-test achievement with an estimate of post-test achievement that would be expected in the absence of Chapter 1 services (§200.80(a)(1)(i)). The estimate of expected post-test achievement requires that the achievement test provide scores that can be referenced to the performance of a norming sample developed by the LEA, the SEA, or the test publisher.

If the LEA uses a published achievement test that has nationally representative norms, these norms can be used to measure achievement gains and to report them to the SEA in terms of the common reporting scale (see below). If the LEA uses an achievement test without such national norms, the LEA must adhere to technical requirements for equating this test with a nationally normed test or be able to use State or local norms developed according to technical requirements for nationally representative norms. (Contact ED for information on these technical requirements.)

Once equated, the norms from the equated test or the State or local norming sample can then be used to measure achievement gains and to report them to the SEA in terms of the common reporting scale. If the SEA does not require the reporting of achievement gains in the common reporting scale, the LEA must report sufficient information about its achievement results to the SEA so that the achievement results can be converted to the common reporting scale by the SEA.

Q14. **What is the common reporting scale?**

A. The common reporting scale is the normal curve equivalent (NCE), a scale that is similar to the percentile rank scale but one that permits aggregation of results. Although NCEs can be averaged to determine the performance of a group, percentiles must not be averaged. The NCE scale ranges from 1 to 99; a score of 50 represents average performance nationally.

Q15. **I know our students have learned, but the mean NCE gain for the group as a whole is close to 0. Is this possible?**

A. Yes. For example, if a group of students pre-tested one spring at 27 NCEs and post-tested the following spring at 27 NCEs, this would indicate that they have learned at the same rate as the norming group. However, with the additional instruction Chapter 1 students receive, the expectation is that they will learn at a faster rate than the norming group and increase their NCE standing from pre-test to post-test.

Q16. **For an LEA to consider an instrument appropriate for Chapter 1 evaluation, must it have (or be equated to a test with) nationally representative norms?**

A. If the instrument is used to evaluate student achievement in grades 2-12 in reading, mathematics, or language arts for the purpose of aggregating and reporting achievement gains to the SEA in terms of the common reporting scale, then it must have, or be equated to a test with, nationally representative norms. If the instrument is to be used for other purposes, then national norms may not be necessary.

Q17. **If an LEA wishes to use a locally developed test to evaluate Chapter 1, must it be equated to an NRT?**

A. If the locally developed test is used to measure achievement gains in reading, mathematics, or language arts that are to be aggregated and reported to the SEA using the common reporting scale, it must be appropriately equated to a nationally normed test. However, a locally developed test used to evaluate other desired outcomes need not be expressed in terms of the common reporting scale or equated to a nationally normed test.

Q18. **May an LEA use a State competency test as part of the objective criteria for evaluation?**

A. If a State competency test is used to evaluate student achievement in grades 2-12 in reading, mathematics, or language arts for the purpose of reporting achievement gains to the SEA in terms of the common reporting scale, then it must have nationally representative norms or be equated to a test with such norms. If the test is to be used for purposes other than reporting under the national standards, student performance need not be compared to national norms.

Q19. **May Chapter 1 funds be used to pay for testing non-Chapter 1 students in an equating study?**

A. Yes. Chapter 1 funds may be used to pay for testing an appropriate number of non-Chapter 1 students in equating State or locally developed tests to nationally normed tests to meet the national standards in Subpart H of the regulations. An appropriate number means a representative sample that is large enough to meet the needs of the equating study.

Q20. May Chapter 1 funds be used to pay for the development or the norming of a State or local test that will be used for Chapter 1 evaluation?

A. No. The use of Chapter 1 funds to develop or norm a State or local test to measure achievement according to the national evaluation standards is prohibited. An LEA must select a test that has already been developed and normed.

Q21. If an LEA does not wish to use NRTs districtwide, may the LEA test only the Chapter 1 children?

A. Yes. Chapter 1 regulations do not require that all children in the LEA be tested. The annual needs assessment and selection of students for Chapter 1 services can be conducted without the administration of NRTs. However, in order to assess the progress of students participating in the Chapter 1 program, pre- and post-test data, using a test with (or equated to a test with) nationally representative norms, are required.

Q22. Is it necessary to test students in the spring of the first grade with an NRT to have a pre-test to evaluate the second grade Chapter 1 program?

A. No. Although this will be done most frequently, an alternative is to measure achievement gains in the second grade from fall-to-fall, while measuring gains in all other grades from spring-to-spring. To do this requires testing in both the fall and the spring in grades two and three, but eliminates the need for norm-referenced testing in grade one.

Local Evaluations--Basic and More Advanced Skills

The Act identifies the purpose of Chapter 1 as improving achievement in basic and more advanced skills (section 1001(b)), and requires LEAs to specify desired outcomes in terms of basic and more advanced skills (section 1012(b)) and evaluate performance and progress in both skill areas (section 1019(a)).

"More advanced skills" are defined in Chapter 1 under section 1471(13) as: "...skills including reasoning, analysis, interpretation, problem-solving and decisionmaking as they relate to the particular subjects in which instruction is provided...[by Chapter 1 programs]."

Methods for assessing more advanced skills in reading and mathematics have been specified in the regulations by identifying specific subtests (reading comprehension and mathematics problems and applications) considered appropriate for measuring aggregate performance (§200.80(a)(2)). Subtests for advanced skills in language arts and early childhood have not been specified.

An LEA must report on its evaluation of performance in basic and more advanced skills to the SEA at least once every three years (§200.35(a)(1)(i)). However, the LEA must annually review performance for the purpose of determining the need for required school improvement activities (§200.38(a)(1)(i)).

Q23. In the evaluation of the Chapter 1 program, must LEAs address both basic and more advanced skills?

A. Yes. Chapter 1 requires that Chapter 1 programs be designed to improve achievement in both basic and more advanced skills. All LEAs must express desired outcomes for Chapter 1 children in terms of basic and advanced skills all children are expected to master. Further, programs are required to review and report aggregate performance in both basic and advanced skills.

Q24. How are advanced skills to be measured in terms of aggregate data?

A. More advanced skills in reading must be measured by the "comprehension" or equivalent score of a nationally normed reading test. For mathematics, a "problems and applications" or equivalent score is required. In language arts, a more advanced skills subtest is not required if a language arts test is used for evaluation. However, if a reading test is used to evaluate the language arts program, the "comprehension" or equivalent score is required.

Q25. Are technical requirements for assessments of advanced skills generally the same as those for assessments of basic skills?

A. Yes. While the objectives measured are different, the essential test characteristics required by the national standards are the same for both. Reporting requirements are identical for both areas.

Q26. Will both basic and more advanced skills be reviewed for determining whether schools have met aggregate performance standards in the local annual review?

A. Yes. Aggregate performance must be determined for basic and more advanced skills and both skill areas must be included in the local annual review. A school showing no improvement or a decline in the aggregate performance of participating children for a 12-month period, in either type of skill, would have to develop a school improvement plan.

Q27. Must a project use two separate test scores to satisfy the reporting requirements for advanced and basic skills? For example, if a Chapter 1 reading project has previously measured achievement with a reading "comprehension" test--or mathematics with a "problem-solving or applications" score--must it now employ additional measures?

A. No. For reporting purposes, basic skills may be measured by any reliable and valid subtest or total test score for which students' scores can be converted to the common reporting scale according to the national evaluation standards. However, particular care should be taken when using a subtest score for these purposes, to determine that the subtest contains a sufficient number of items to be valid and reliable when used as a free-standing measure.

Q28. May subtests be used to assess more advanced skills?

A. Yes. Advanced skills in reading are to be measured by a reading comprehension (or equivalent) subtest. Advanced skills in mathematics are to be measured by a problem-solving or applications (or an equivalent) subtest. When it appears that more than one subtest could be used to measure reading comprehension or mathematics problem-solving, the objectives measured by each subtest should be examined to determine which is the best measure of comprehension or problem-solving.

Q29. **May total reading scores be used for advanced skills measurement?**

A. Generally, no. Most total reading test scores are a composite of scores from two or more subtests, only one of which is comprehension; thus, total reading would not be acceptable as a measure of advanced skills. However, in exceptional cases where the total reading is in fact equivalent to a comprehension subtest, the score could be used for advanced skills measurement.

Q30. **Some nationally normed tests have mathematics subtests entitled "concepts and applications" that assess students' understanding of concepts and their abilities to apply concepts to solve problems. Other tests have separate subtests for concepts and problem-solving. May SEAs allow any of these subtests as measures of advanced skills in mathematics?**

A. Section 200.80(a)(2)(i)(B) of the regulations specifies the use of the "problems and applications" or equivalent score of a nationally normed mathematics test as the measure of advanced skills in mathematics. Whether a particular subtest meets this requirement depends on the actual content of the test, and not the name given to it by the publisher. To qualify, the test must measure application of mathematical concepts. Tests that primarily measure computational skills or knowledge of definitions would not qualify.

Q31. **For some nationally normed mathematics tests there is more than one "problems and applications" score. In such cases should the LEA use multiple scores, combined scores, or choose a single score to assess more advanced skills in mathematics?**

A. A single score must be chosen. Any subtest that is equivalent to a problem-solving and applications subtest may be used to measure advanced skills in mathematics. When it appears that more than one subtest could be used to measure more advanced skills in mathematics, the objectives measured by each subtest should be examined to determine which is the best measure of applications or problem-solving. Whatever subtest is used, it must be possible to convert student performance on the subtest to the common reporting scale (currently NCEs) at the local or State level.

Q32. **Which language arts tests or subtests are appropriate for measuring more advanced skills?**

A. No particular subtests within language arts achievement tests have been specified by the Act or regulations as measures of more advanced skills. Determination of the best measure of advanced and basic skills for a particular language arts program is left to the LEA.

Recognizing the difficulty of locating valid language arts tests in areas other than reading, the regulations permit reading tests to be

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used to assess both basic and advanced skills achievement in a language arts program. In that case, the appropriate test for assessing advanced skills in a language arts program would be the reading comprehension or equivalent subtest of the reading test.

Q33. **If a Chapter 1 program is using a language arts test (other than reading) to measure basic skills performance, must the program also report some measure of advanced skills for aggregate performance requirements?**

A. No. When it has been determined that the best measure of the Chapter 1 program is a language arts test, there is no requirement for reporting an advanced skills score for aggregate performance. However, an LEA must include more advanced skills in language arts among its desired outcomes. It may wish to assess these by other means such as holistic scoring of writing samples.

Q34. **Many advanced skills are not measured at all, or well, by NRTs. Are there alternatives for assessment?**

A. Currently, the national evaluation standards specify minimum requirements for measuring advanced skills in reading and mathematics in order to facilitate the national aggregation of the impact of Chapter 1 programs in these areas. The intent is to develop a broad national picture of Chapter 1 students' performance in skills beyond the basics. LEAs are encouraged to consider other valid measures for assessing student performance in advanced skills. However, results from these other measures cannot be substituted for reporting purposes for the measures of advanced skills in reading and mathematics required in the national standards.

Norm-referenced achievement test results are only part of the evaluation of a Chapter 1 program. Local Chapter 1 programs are encouraged to use additional measures of advanced skills that are related to the instructional focus and are expressed as desired outcomes.

Local Evaluations--Annual Testing Cycles

Q35. **Must LEAs use an annual testing cycle for evaluation of Chapter 1 student achievement?**

A. Yes. For the purpose of reporting aggregate performance to the SEA, an LEA must evaluate student achievement by measuring achievement over a period of approximately 12 months. LEAs may use either a spring-to-spring or a fall-to-fall testing interval.

If an LEA measured student achievement on a fall-spring interval in school year 1988-89, it may continue to do so for one additional year if the SEA determines that implementing an annual testing cycle in that LEA would be a substantial hardship.

Q36. **If, in implementing an annual testing cycle, the same level of the test is not appropriate for the grade level at post-test time, what should an LEA do?**

A. LEAs should administer the test level that most closely matches the curriculum at each grade level, and that is appropriate for the valid measurement of achievement levels of Chapter 1 students.

Q37. If an LEA intends to implement an annual testing cycle but wants to test in February using mid-year norms, may these results be reported for Chapter 1 evaluation purposes?

A. No. A winter-winter testing schedule effectively evaluates only the second half of one year's Chapter 1 program and the first half of next year's program. Chapter 1 programs must be evaluated over a program year.

Q38. If an LEA is using a spring-spring testing schedule for Chapter 1 testing, must students who enter the Chapter 1 program in the fall without a spring pre-test be tested in the fall for evaluation purposes?

A. No. Ordinarily, no pre-test score would be available for such a student, and that student's achievement would not be included in the LEA's Chapter 1 evaluation. However, if the student participated in a statewide testing program, or was tested the previous spring in another school within the LEA, or in another LEA, that score can be used as a pre-test if it was obtained from the same test and edition used in the Chapter 1 evaluation.

If the proportion of new fall Chapter 1 students without spring pre-tests is large, the LEA should consider a fall-fall testing cycle for them and report both spring-spring and fall-fall testing results.

Local Evaluations--Sustained Effects Studies

Q39. What are the basic requirements for LEAs conducting a sustained effects study?

A. The basic requirements of a sustained effects study include:

- Determination if the effect of the Chapter 1 program has been sustained over more than one program year;
- Assessment of the performance of the same students over two consecutive 12-month periods;
- Use of either a spring-spring-spring or a fall-fall-fall testing interval; and
- Use by the LEA in reviewing plans for improving the program.

Q40. How often must an LEA conduct a sustained effects study and what is the minimum time period for such studies?

A. At least once during each three-year evaluation cycle an LEA must collect information to determine whether student achievement gains are sustained over a period of more than 12 months. To make this determination, an LEA must assess performance of the same Chapter 1 children for at least two consecutive 12-month periods, provided these children continue to be enrolled in schools in the LEA.

Q41. **What testing cycles are appropriate to enable an LEA to meet the sustained effects study requirement?**

A. Either a spring-spring-spring testing interval or a fall-fall-fall testing interval is appropriate.

Q42. **What does sustained effect mean?**

A. Sustained effect means that the level of performance that was attained at the time of the post-testing has not declined when measured at the third data point. Whether a decline has occurred is determined by comparing the level of performance of the students on the post-test with the level of their performance at the third data point.

Q43. **Is the LEA required to report sustained effects information?**

A. No. Unless requested by the SEA, the LEA is not required to report the results.

Q44. **Are any Chapter 1 students excluded from the sustained effects requirements?**

A. Yes. Section 1019(c) of Chapter 1 exempts preschool, kindergarten, and first grade students from being included in sustained effects studies.

Q45. **Must an LEA measure the sustained effects of support services?**

A. No. Sustained effects studies are only required for instructional services.

Q46. **Must sustained effects studies be done for each subject (reading, mathematics, language arts) addressed in a Chapter 1 program and for every grade level?**

A. No. In the Joint Explanatory Statement of the Committee of Conference, pg. 324, the conferees state that in implementing the sustained gains requirement, "local educational agencies may use a sampling procedure or carefully designed study to meet the sustained gains requirement rather than trying to track all children served at all grade levels in all subject areas for a period of three years."

An LEA should construct a carefully designed sustained effects study capable of answering important questions about the effectiveness of the program over time.

If an LEA elects to use a sampling procedure as part of its sustained effects study, the sample should be representative of students, grades, and subject areas that are the focus of the sustained effects study.

Q47. **Is norm-referenced achievement testing the only acceptable means for determining whether improved performance of students is sustained for more than one year?**

A. No. However, the method used to measure sustained improved student performance should match the method used to measure improved performance in the Chapter 1 program. The national standards require the use of NCEs based on nationally normed achievement tests (or equated tests) in measuring improved performance in basic and advanced skills in reading, mathematics, or language arts in grades 2-12. Consequently, measuring sustained effects will generally be based on this type of testing since data will already be available.

Q48. Must the LEA track students who have left the Chapter 1 program in order to meet the sustained effects requirement?

A. Yes. If the students are still attending school within the LEA, then reasonable efforts should be made to include them in the sustained effects study. In order to assess the impact of Chapter 1, it is necessary to include the performance of students who have left the program. Therefore, Chapter 1 funds may be used by the LEA to test children no longer receiving Chapter 1 services to determine whether achievement gains are sustained over a period of more than 12 months.

Q49. Must an LEA use the same methodology for the sustained effects studies for different projects or components?

A. No. Since the purpose of sustained effects studies is determining program effectiveness and providing information for making modifications to increase the impact of Chapter 1, LEAs may design different studies for individual projects and components.

Q50. If a Chapter 1 project fails to show a positive effect in a particular grade and subject area as a result of its program evaluation, must it still implement a sustained effects study in that grade and subject area?

A. No. The purpose of the sustained effects study is to determine whether or not improved performance has been sustained over time. However, using those program evaluation results to modify the program, as necessary, would be appropriate.

Q51. Must sustained effects study results be used to inform program improvement decisions?

A. Yes. LEAs must use the results of the Chapter 1 evaluation, including sustained effects studies, in designing modifications to improve the program.

Q52. May a sustained effects study be used to meet the requirements for evaluating student progress in the regular program?

A. No. While it may be possible for a well-designed sustained effects study to contribute to the review of the progress of a Chapter 1 student in the regular program, it probably would not provide sufficient information. For example, a student may demonstrate positive yearly gains in Chapter 1 that are sustained over time, but the student may be making minimal progress in the regular program utilizing other important criteria of performance.

Q53. **What impact will a change in the measurement instrument have on an LEA's sustained effects data when the change occurs within the testing year of the third data point?**

A. If the pre- and post-test results cannot be equated to the new measurement instrument used for the third data point, caution should be used when interpreting whether gains have been sustained. Any change in NCE averages may be due to the change in instruments and/or their norms.

If the measurement instrument used for the third data point is different from that used for the pre- and post-test, there are essentially three ways to handle the situation: (1) use appropriate equating results to estimate scores on the sustained effects test; (2) administer both tests at the time of the post-test; or (3) advise caution in interpreting the gains/losses between the post-test and the sustained effects test. The Chapter 1 program should anticipate changes in tests so that choices can be planned. The third choice should be avoided whenever possible.

Q54. **Does the local annual review discussed in §200.38(a) of the regulations require an LEA to conduct a sustained effects study each year and must the study be done for each school rather than for the project or total program?**

A. No. The determination of sustained improved performance in §200.38(a)(2) refers to improved performance of any school implementing a joint program improvement plan. The LEA must annually review the performance of schools implementing joint improvement plans until improved performance is sustained over a period of more than 12 months.

This requirement is not the same as the requirement for sustained effects studies discussed in §200.35(a)(2)(i). The confusion arises from the use of similar language, i.e., sustained improved performance.

Local Evaluations--Performance in the Regular School Program

The regulations require that LEAs review Chapter 1 students' performance in the regular school program at least once every three years (§200.35(a)(1)(ii)).

The requirement is based on the concern that the gains reflected by achievement testing in Chapter 1 may not translate into improved performance in regular classrooms. Conversely, progress in the regular program may not be reflected by achievement testing conducted for the Chapter 1 program.

Q55. **What is the regular program?**

A. The "regular program" is that program defined by the educational goals and objectives to be attained by students at a certain grade level and in a given subject area. This program could be defined at the school, the district, or the State level. In practice, this can mean the educational program provided to those students who are not receiving services for special populations such as ESL, handicapped, gifted, or

Chapter 1. The definition of regular program is left to State and local officials to determine.

Q56. What are the basic requirements for LEAs assessing progress in the regular school program?

A. To meet its program evaluation obligations, an LEA must:

- Conduct a review of Chapter 1 students' progress in the regular school program at least once every three years;
- Determine through the review whether the ultimate purpose of Chapter 1--success in the regular program of the LEA--is being achieved; and
- Include that information in the evaluation results reported to the SEA at least once every three years.

Q57. What measures or indicators may be included in the review of student progress in the regular program?

A. Ideally the measures or indicators chosen will be those typically used by an LEA to define major benchmarks of academic progress and success in school. The areas covered by the assessment should reflect the shared goals and objectives between the regular program and Chapter 1. There should be a similarity of content taught, skills developed, and level of difficulty.

The assessment may include additional testing in other subject areas that are related to the instructional objectives of the Chapter 1 program, but such testing is not required. The measures chosen will be those typically used by an LEA to indicate major benchmarks of academic progress.

Q58. How many measures or indicators should be included in the assessment?

A. There is no minimum number of measures or indicators required by the regulations. However, LEAs are encouraged to use more than one.

There are several advantages to using multiple measures or indicators of success in the regular program. The use of multiple measures can provide more reliable and more objective results, a more comprehensive picture of students' academic performance and progress, and more information to use in identifying strengths and weaknesses of both the regular program and Chapter 1 in serving these children.

Q59. Must LEAs use achievement test data to assess progress in the regular school program?

A. No. There is no Federal requirement that LEAs examine achievement test data when assessing or reviewing Chapter 1 student performance in the regular program. An SEA may, however, require its LEAs to collect such information.

Because the Secretary has emphasized determining through this requirement whether the purpose of Chapter 1 is being achieved, the use of some type of achievement data would be useful. Data could take the form of additional standardized testing, test results from district or State administered testing programs, end-of-chapter or textbook tests, or criterion-referenced skills tests or checklists.

The determination of information to be collected and the method are left to State and local officials.

Q60. **May LEAs use sampling procedures to assess Chapter 1 students' performance in the regular school program?**

A. Determination of how to conduct the review of progress in the regular school program is left to State and local officials. Sampling procedures, if used, should result in a sample that is representative of the Chapter 1 students served.

Q61. **Is the review of children's progress in the regular school program for LEA use only? If not, are results reported to the SEA?**

A. It is assumed that the LEA will use information from the review of Chapter 1 children's progress in the regular program to make adjustments in the Chapter 1 program and, as appropriate, in the regular program of the LEA to better meet the needs of Chapter 1 students. Evaluation information from the review of Chapter 1 children's performance in the regular program must also be included in the LEA evaluation report submitted to the SEA at least once every three years. The SEA has the option of requesting LEA evaluation information more frequently.

How information will be collected and the form it will take in the report are decisions left to State and local officials to determine. There is no requirement that this information be aggregatable.

Local Evaluations--LEA Reporting Requirements

LEAs are required to report two different types of data concerning their Chapter 1 programs to the SEA. The first type is the information required by the SEA to complete its Annual Performance Report. LEAs must report this information annually to the SEA. The second type is the results of the LEA's evaluation of the effectiveness of its Chapter 1 program. This information must be reported to the SEA at least once every three years, or more frequently if requested by the SEA. The accuracy, quality, and completeness of the information and data collected and submitted provide Congress and the general public a picture of how well Chapter 1 is performing.

Q62. **What information must be included in the data reported for the SEA's Annual Performance Report?**

A. The Annual Performance Report prepared by the SEA must contain data specified in section 1019 of the Act, by the Secretary, and by the SEA. It is the SEA's responsibility to inform the LEA of the specific data that are required. The information required may change from year to year depending on the needs of the SEA or the Secretary.

Q63. What is meant by "children with handicapping conditions" as stated in section 1019 of Chapter 1 under the SEA's data collection requirement and again in §200.35(c)(1) of the regulations?

A. Chapter 1 programs are required to report the number of children with handicapping conditions who are receiving Chapter 1 services. For these reporting purposes, children with handicapping conditions may be defined as those who have an Individualized Education Program (IEP) as required by P.L. 94-142.

Q64. May an SEA or LEA use a sampling procedure for obtaining and reporting information on participation counts and other demographic data for the Annual Performance Report?

A. No. Such information must be reported for all Chapter 1 students annually.

Q65. Is there a minimum period of time for which students must have been served to be included in the participation counts and other demographic data for the Annual Performance Report?

A. No. A Chapter 1 participant is a student who received any amount of Chapter 1-funded instruction.

Q66. Must an SEA report LEA evaluation data each year in conjunction with the Annual Performance Report?

A. No. An SEA must submit evaluation data at least every two years. However, those SEAs that collect achievement data annually are encouraged to submit evaluation data to the Secretary every year. This will permit the Department to provide in its Annual Report to the Congress as complete a picture of Chapter 1 nationally as possible.

Q67. What evaluation data must the LEA report to the SEA?

A. The evaluation data reported by the LEA to the SEA must include information about the--

- o Aggregate achievement of students by grade (2-12) and content area (reading, mathematics, and language arts) in both basic and advanced skills, for the LEA as a whole;
- o Attainment of desired outcomes stated in the LEA's application; and

- o Review of Chapter 1 children's progress in the regular school program.

The SEA may also require the LEA to report the results of sustained effects studies.

Preschool, kindergarten, and first grade programs are exempt from collecting aggregate achievement data but not from reporting evaluation information based on other measures.

Q68. How often does an LEA have to report its Chapter 1 evaluation results to the SEA?

A. Evaluation results are reported to the SEA at least once during each three-year application cycle or more frequently if required by the SEA. The results of sustained effects studies do not have to be reported unless required by the SEA.

Q69. Specifically, how should an LEA report student achievement results to the SEA?

A. In reporting aggregate student achievement, an LEA must use the current common reporting scale required by the Secretary, which is the NCE. If an LEA is given permission by the SEA, it may report in another metric unit such as percentile or standardized scores as long as it provides the SEA with enough information to allow conversion of results to NCEs.

Local Evaluations--Technical Standards

Four technical standards are provided in the Chapter 1 regulations as part of the national evaluation standards (§200.81). The standards are required only for the evaluation of the achievement of students in grades 2-12 receiving services in reading, mathematics, or language arts. However, they are technically relevant to the evaluation of all Chapter 1 programs and services.

Q70. What are the technical standards for evaluating student achievement?

A. Evaluations of student achievement under the national standards must meet the following four technical standards:

- o Evaluation findings must be representative of all students served.
- o Evaluation instruments and procedures must be reliable and valid.
- o Achievement gains must be assessed in a valid manner.
- o Errors in evaluation procedures must be minimized through quality control mechanisms.

Q71. How does an LEA ensure that its evaluation findings are representative of all students served?

A. Evaluation findings will be representative if evaluation data are obtained for all students served or for a representative sample of students served. Sampling students for evaluation requires a carefully designed and implemented sampling plan that conforms to generally recognized standards for research and evaluation.

Q72. What constitutes a representative sample of students for use in local Chapter 1 evaluations?

A. A sample must represent all of the students served by the Chapter 1 program in terms of their grade levels, schools, instructional services received, supportive services received, and any other known characteristic that might influence the impact of the Chapter 1 program on the students' achievement of basic and more advanced skills. The sample must be drawn in a probabilistic manner so that every student has a known non-zero chance of being included and be large enough to guarantee that results are generalizable to the entire population. Although there are many sampling procedures that can achieve this, they all require time and resources. In most cases, it will be simpler to include all students served, especially since the student program improvement requirements necessitate assessment of all Chapter 1 students.

Q73. If an LEA has high levels of mobility or turnover within the Chapter 1 program such that many students stop receiving services during the school year, must the LEA obtain post-test data for these students?

A. Yes. The LEA must track the performance of Chapter 1 participants who stop receiving services during the school year, except for students who have been transferred to another LEA.

Q74. If an LEA is using a fall-fall schedule for Chapter 1 testing and a student served in one year transfers to another school in the LEA over the summer, must that student be tested by Chapter 1 in the fall?

A. Yes. So long as the student has transferred to a school in the LEA, the student must be post-tested for Chapter 1 evaluation.

Q75. If an LEA is using a spring-spring schedule for Chapter 1 testing, must students who enter the Chapter 1 program in the fall without a spring pre-test be tested in the fall?

A. No. Ordinarily, no pre-test score would be available for such a student and that student's achievement data would not be included in the LEA's Chapter 1 evaluation. However, if the student was tested the previous spring in another school within the LEA or in another LEA, that score could be used as a pre-test if it was obtained from the same test and edition used in the Chapter 1 evaluation. If the proportion of such students is large, the LEA should consider a fall-fall testing cycle for them and report both spring-spring and fall-fall testing results.

Although not required for evaluation purposes, LEAs should still assess students who enter in fall for instructional purposes.

Q76. **Must an LEA report evaluation results if the number of students with pre- and post-test scores is small in comparison to the total number of students who received Chapter 1 services?**

A. Yes. It is the LEA's responsibility to report the achievement of all students in grades 2-12 who have pre- and post-test scores in the areas of reading, mathematics, or language arts.

Q77. **Since we will never have scores on all children, on what proportion of children participating in Chapter 1 should an LEA expect to have matched test scores?**

A. Ideally, the LEA will have test scores on all Chapter 1 children who were attending school in the LEA at both testing points, since such data are already required under student program improvement. If the number of matched scores is small relative to the number of students served, this is an indication that a serious problem exists. The LEA should immediately implement techniques for maximizing the number of students tested at both times, e.g., give make-up tests, make available testing data more accessible to Chapter 1 staff, carefully review student record folders, track students who transfer among LEA schools, and use computer database software to facilitate good recordkeeping practices. With thorough testing and follow-up practices, obtaining matched scores on virtually all students attending schools in the district at both test points is a realistic goal.

Q78. **What is test validity and what is the most important type of validity an LEA should be concerned about when selecting tests for Chapter 1 purposes?**

A. The validity of a test is the extent to which it measures what it is intended to measure. The most important type of validity in selecting a test for Chapter 1 evaluation is the degree of correspondence between the curriculum or instructional content of the Chapter 1 program and the content of the test.

Q79. **May student writing samples be used as evidence of achievement in the evaluation of a Chapter 1 language arts program?**

A. Yes. If an assessment of writing matches the objectives of the Chapter 1 language arts program and the assessment methodology yields aggregatable scores for grades 2-12 according to the national standards, then the use of student writing samples is appropriate as a measure of achievement.

If the scores are not aggregatable, they may still be used to assess student performance on other desired outcomes of the program.

Q80. How does an LEA determine the reliability of a test for Chapter 1 evaluation?

A. The test publisher's reliability estimates for all subtest and total test scores can generally be found in the technical manual for the test.

Q81. What procedures must an LEA follow in order to make a valid assessment of Chapter 1 student achievement gains?

A. For Chapter 1 programs providing instructional services in reading, mathematics, or language arts in grades 2-12 during the regular school year, the LEA must:

- Administer a pre-test and post-test separated by approximately 12 months on a spring-spring or fall-fall basis.
- Use nationally representative norms to estimate post-test achievement expected in the absence of Chapter 1 services.
- Calculate the difference between the actual post-test achievement of the Chapter 1 students and the achievement expected in the absence of the program using the common reporting scale.

An SEA may assume the responsibility of using nationally representative norms to calculate achievement gains and express them in the common reporting scale. In such instances, the LEA must provide the SEA with the achievement data required.

Alternative evaluation procedures may be used if the LEA obtains the approval of the SEA and the Secretary prior to their use.

Q82. What alternative evaluation procedures does the Department have available from which LEAs may choose?

A. None. The Department believes that the procedures required in the national evaluation standards are the best currently available that will meet the data aggregability and other requirements of the Act. The provision for alternative standards is included to provide a means for approving other new or innovative procedures that SEAs or LEAs might propose that can meet these requirements.

Q83. What are the requirements of alternative procedures for making a valid assessment of achievement gains that must be met before they can be approved by the SEA and the Secretary?

A. Alternative procedures must yield a valid and reliable measure of achievement after receiving services for reading, mathematics, or language arts and an estimate of achievement expected in the absence of those services. Such procedures must also provide results that can be expressed in the common reporting scale.

Q84. What evaluation practices should an LEA follow to ensure the validity of the assessment of achievement gains?

A. An LEA should--

- Use the same achievement test battery and edition and the same or equivalent subtest for pre- and post-testing;
- Use the same edition of national norms for converting pre- and post-test results to the common reporting scale;
- Use the most recent or previous edition of the achievement test;
- Administer the test at the same time of year that the publisher's norming group was tested;
- Administer the level of the test that is most appropriate for the functional level of the students; and
- Correct for the regression effect if students are selected for the program solely on the basis of their pre-test scores.

Q85. May a subtest score be used for the pre-test and the total test score of the same test be used for the post-test?

A. No. This would yield a meaningless result.

Q86. May an LEA use entirely different but equated tests for the pre-test and the post-test?

A. Yes. Some publishers have equated two different nationally normed tests. Publishers also typically equate consecutive editions of the same test. If the Chapter 1 program must switch to a new test or a new edition of the same test that is equated to the old test, student pre-test scores on the old test (or edition) should be converted to equivalent scores on the new test (or edition) so that the pre-test and post-test results are on the same scale. Publishers typically distribute special tables for making these conversions.

The norms for the new test (or edition) should be used to obtain both pre- and post-test NCEs.

With annual testing schedules, both sets of norms will be used for the pre-test because it is also the post-test for the previous year. The old norms should be used to obtain post-test NCEs for the previous year.

Q87. May an LEA use entirely different and unequated tests for the pre-test and the post-test?

A. No. If the Chapter 1 program must switch to an entirely different test and the new test is not equated to the old, the LEA should consider a sampling strategy that would provide evaluations and avoid or minimize double-testing. If Chapter 1 students may take either the new or the old test, the LEA should consider administering the old test to half of the students (randomly determined) and the new test to the other half. The performance on the old test would serve to estimate post-test scores; the performance on the new test would estimate pre-test scores for the next year's evaluation. If all Chapter 1 students must take the new test, the LEA should consider double-testing a representative random sample of students with the new and old tests. The scores of the sample on the old test would be used to estimate the average post-test scores for all Chapter 1 students.

Q88. **If a publisher develops new norms for its test between the LEA's administration of the Chapter 1 pre-test and post-test, which set of norms should be used to obtain pre- and post-test NCEs?**

A. The most recent norms should be used for both the pre-test and the post-test. With annual testing schedules, both sets of norms will be used for the pre-test because it is also the post-test for the previous year. The old norms should be used to obtain post-test NCEs for the previous year.

Q89. **How close to the test publisher's norming dates should an LEA administer the Chapter 1 pre-test/post-test?**

A. Testing of a norming sample by the publisher usually extends over several weeks. The midpoint of this period is used to determine appropriate testing times. Chapter 1 testing should be done within a two-week period on either side of the midpoint of the publisher's norming period. Tests can be administered as much as six weeks on either side of this midpoint so long as norms are created for the actual testing time by interpolating or extrapolating from the publisher's norms tables.

Make-up tests for students who missed the original testing session should be completed within two weeks of the original testing date.

An explanation of how to interpolate or extrapolate can be provided by your Chapter 1 Technical Assistance Center (TAC) or Rural Technical Assistance Center (R-TAC).

Q90. **An LEA wants to test once a year in February using mid-year norms. May these results be used for Chapter 1 evaluation?**

A. No. A winter-winter testing schedule effectively evaluates only the second half of one year's Chapter 1 program and the first half of the next year's program. Chapter 1 programs must be evaluated over a program year.

Q91. **Is out-of-level testing permissible?**

A. Yes. Out-of-level (or functional level) testing is testing a child or group of children at their current functioning level. Functional level testing is strongly encouraged, whether in-level or out-of-level. An LEA should consult the SEA regarding State policy concerning the reporting of out-of-level testing results.

Q92. **If test scores used for selecting Chapter 1 students are also used for pre-test/post-test scores, must adjustments for regression be made?**

A. If Chapter 1 students are selected only on pre-test scores, a significant amount of regression to the mean will take place and the LEA must correct achievement gains for the regression effect.

(For example, regression to the mean in Chapter 1 occurs when a group of students is systematically selected from a larger group only on the basis of low pre-test scores on a particular instrument; when post-tested on the same instrument this group's average score will automatically increase (regress to the mean) without any intervention (instruction) having taken place. In order to adjust for this apparent, but non-Chapter 1 related "improvement," the post-test score must be modified to remove the artificial gain due to the regression effect.) If the pre-test scores were combined with other measures (such as teacher judgment, letter grades, other test scores) to select students, a lesser and perhaps negligible amount of regression will take place, and correcting for the regression effect is not required. However, LEAs should be aware that if the combined measures are themselves highly correlated and together still systematically select only those students with the lowest pre-test scores, adjustment for regression is again necessary.

Assistance concerning when and how to adjust for regression is available from your Chapter 1 TAC or R-TAC.

Q93. **How is the correction for the regression effect calculated?**

A. While the required calculations are not complex, they are too detailed for inclusion here. Generally speaking, the formula used to calculate the correction employs information about the test score distributions for Chapter 1 students and for the total group of Chapter 1 and non-Chapter 1 students (the mean and variance), and about the relationship between pre-test and post-test scores for the total group (the pre-test-post-test correlation). In some cases this information may be difficult to obtain, but in such instances it may be possible to employ reasonable estimates to determine the needed correction. Your Chapter 1 TAC or R-TAC will be able to provide consultation and guidance concerning the best way to calculate the regression effect correction.

Q94. **What kinds of errors in evaluation procedures should an LEA be concerned with and what are some of the quality control mechanisms that can be used to minimize these errors?**

A. Errors in Chapter 1 evaluation typically occur in the following areas:

- Scoring and editing.

- Converting scores.
- Data entry or transcription.
- Computation.

The mechanisms that can be employed to minimize such errors include the following:

- Repeating procedures on a random sample of scores or calculations.
- Employing tools, such as calculators and computers to perform repetitive or complex tasks.
- Hiring personnel with appropriate technical expertise.
- Establishing checks for consistency and accuracy in evaluation results.
- Providing training and/or tutorial materials for staff.

Q95. **On how many of its students should a Chapter 1 project collect test scores?**

A. It is the LEA's responsibility to obtain pre- and post-test scores on all students who receive Chapter 1 services for a substantial portion of the project year (or on all those identified in a sampling plan if one is being used). This requirement may mean locating individual student records within district test files, arranging for make-up testing if students have been absent, or obtaining scores from other buildings within the LEA if a student has transferred. Automated databases should be considered to facilitate recordkeeping. Some software for such databases is available free of cost through the Chapter 1 TACs.

Q96. **Under what circumstances may a student's test score be judged invalid and therefore not be included in the evaluation?**

A. Scores may be excluded from the evaluation only for the following reasons:

- The score has specifically been identified by the test publisher or independent scoring service, through its edit procedures, as being invalid.
- The score resulted from documented problems or irregularities in test administration.

In either case, the number and specific reasons for such exclusions must be included in the local evaluation report which is to be made public.

Local Evaluations--Requirements for Special Chapter 1 Programs

All Chapter 1 programs must be evaluated to determine their effectiveness. The Act and regulations, however, provide special consideration for several types of Chapter 1 programs regarding aggregate performance information. Section 1019(c) of Chapter 1 exempts preschool, kindergarten, and first grade Chapter 1 students from the requirement of collecting aggregate achievement information using the national standards and from conducting sustained effects studies. Exemptions are further described in §§200.35(a)(1)(i)(B) and 200.80(a)(1)(i)(A) of the regulations.

Section 200.80(a)(1)(i)(A) of the regulations also exempts Chapter 1 projects specifically designed to teach English to limited English speaking children from collecting aggregate achievement information following the national standards.

Schoolwide Chapter 1 projects are not exempt from collecting aggregate achievement data following the national standards. They are discussed in this portion of the Policy Manual because the continuation of schoolwide projects requires the use of evaluation information. The regulations address schoolwide accountability requirements in §200.36(f).

Q97. Are there different evaluation requirements for special Chapter 1 projects or projects serving special students?

A. Yes. There are some variations in evaluation requirements for projects serving preschool, kindergarten, and first grade students; students with LEP; and students enrolled in schoolwide projects. Special requirements for projects serving those students are discussed below.

Preschool, Kindergarten, First Grade Projects and Students

Q98. How do evaluation requirements for early childhood projects and students differ from basic requirements?

A. Early childhood projects are required to--

- o Evaluate the effectiveness of the program;
- o Evaluate at least once every three years (or more frequently if required to do so by the SEA) and report results to the SEA; and
- o Conduct a local annual review of program effectiveness in improving student performance in the form of progress toward meeting desired outcomes.

Early childhood programs are not required to do the following--

- o Report aggregatable achievement data.
- o Use NRTs to report achievement.

- o Conduct sustained effects studies.
- o Use fall-fall or spring-spring evaluation cycles.

Q99. Are preschool, kindergarten, and first grade programs prohibited from using norm-referenced achievement tests?

A. No. Although the statute clearly exempts programs at these grade levels from the norm-referenced testing requirements, such testing is not prohibited. However, Chapter 1 programs serving children in these grades should examine carefully the appropriateness of any test for assessing the objectives of the program and the children served. Norm-referenced tests may not be appropriate for validly and reliably assessing the performance of young children; such tests should never be used as the sole measure for decisionmaking.

Q100. In the local annual review process how will progress be measured for preschool, kindergarten, and first grade Chapter 1 programs?

A. The only consistent basis for assessing effectiveness, as part of the local annual review process, is use of the desired outcomes included in the project application, because preschool, kindergarten, and first grade programs are excluded from the aggregate performance requirement.

Progress on desired outcomes may be measured by a variety of indicators such as improved student performance measured by CRTs, improved attendance, and fewer retentions in grade. Progress on desired outcomes can be measured with a variety of instruments and procedures such as developmental checklists, criterion- or norm-referenced tests (as appropriate), observational scales, teacher ratings, skills mastery checklists, attendance, and retention records.

Q101. May Chapter 1 children in preschool, kindergarten, and first grade be included in the aggregate performance data considered by the LEA as part of the local annual review?

A. No. LEAs may not include data from children at these grade levels in aggregations because such data may be unreliable and could lead to distorted overall results. The evaluation of the progress of these students should be reviewed separately from grades 2-12 results. The local annual review should be based on progress toward meeting the early childhood program's desired outcomes.

Q102. How does the LEA review aggregate scores in a K-2 program? If only second grade has test scores and does not show progress, must the LEA develop a program improvement plan for the entire school?

A. Regardless of how performance is assessed in kindergarten and first grade, failure to show an NCE gain greater than zero in second grade would initiate program improvement requirements, since the second grade scores constitute the entire aggregate performance measure in this case. If, under these circumstances, credible evidence showed that the program was successful in kindergarten and first grade, the program improvement plan would obviously focus on the second grade component.

Limited English Proficient Students

Q103. Must LEAs evaluate basic Chapter 1 reading, mathematics, and language arts programs that serve LEP students?

A. Basic programs with some LEP students must follow all the regular evaluation requirements, including reporting aggregated performance data.

Q104. How may an LEA evaluate the performance of LEP children in Chapter 1 projects?

A. If the students were selected for participation on the basis of test scores on a nationally normed (or equated) test, the students' pre-test and post-test scores should be included in the aggregate performance measure. If students were selected on other measures, then evaluation should be based on desired outcomes.

Students in Schoolwide Projects

LEAs operating schoolwide projects must conduct evaluations and local annual reviews in the same manner as other projects. In addition, there are special accountability standards for schoolwide projects that must be met in order to continue the projects. The accountability requirements can be fulfilled using information collected for evaluations and annual reviews. The Act and regulations stress that achievement data must be collected annually for each school participating in a schoolwide project.

Q105. What are the accountability standards that apply to schoolwide projects?

A. In order for a school to continue as a schoolwide project, the LEA must demonstrate that after three years the achievement gains of educationally deprived children in the schoolwide project exceed the average gains of comparable Chapter 1 students in the LEA as a whole, or comparable Chapter 1 students in the same school for the three years prior to the implementation of the schoolwide project.

These standards are in addition to, and not in place of, the program improvement requirements applicable to all Chapter 1 projects.

Q106. Do the same accountability standards apply to secondary schools?

A. No. For a secondary school, if achievement levels do not decline when compared to achievement levels of comparable Chapter 1 students in the LEA as a whole, or comparable students in the same school from the previous three-year period, the schoolwide project may continue if the school also demonstrates lower dropout rates, increased retention rates, or increased graduation rates. It is not required that achievement gains exceed previous achievement gains in order to continue a secondary schoolwide project.

Q107. **Must all students in a schoolwide Chapter 1 project be included in the evaluation of that project?**

A. No. Only the performance results of the educationally deprived children who were counted for funding level determinations for the schoolwide project are included. The local annual review should also be based on this group of students.

Q108. **For making the accountability comparison to continue schoolwide projects, which students constitute the comparable group?**

A. The comparable group consists of either:

- All Chapter 1 students served in the rest of the LEA in the same grades served by the schoolwide project school, or
- All Chapter 1 students served in the schoolwide project school during the three years prior to the schoolwide project.

For example, if accountability comparisons are made with Chapter 1 students served in the rest of the LEA and these students were all in grades 3 through 6, then all students in the schoolwide project in grades 3 through 6 who meet the selection criteria for Chapter 1 in the LEA would be included in the accountability comparison.

State Evaluation and Reporting Requirements

Like the LEA, the SEA has a responsibility for evaluating the effectiveness of its Chapter 1 programs. The SEA is required to submit to the Secretary an Annual Performance Report that summarizes the information provided to it by its LEAs. In addition, the SEA must, at least every two years, prepare and submit to the Secretary, following national standards, aggregated achievement data received from LEAs.

Q1. **What are the basic State evaluation requirements for Chapter 1?**

A. To meet its Chapter 1 evaluation requirements, an SEA must do the following:

- Conduct evaluations at least every two years.
- Base its evaluation on local evaluation data of Chapter 1 programs.
- Inform LEAs in advance about the evaluation data needed and how they will be collected.
- Submit the results of its evaluation to the Secretary.
- Make public the results of the evaluation.

Q2. **What reports must an SEA submit to the Secretary?**

A. An SEA must submit an Annual Performance Report that contains specific demographic data (e.g., race, age, gender, number of children with handicapping conditions) for children participating in Chapter 1 programs in the State.

An SEA must submit aggregated achievement data received from its LEAs to the Secretary at least every two years. Some SEAs collect aggregated achievement data annually from their LEAs. In these cases, the SEA is encouraged to submit those data to the Secretary annually.

Q3. **What is the common reporting scale established by the Secretary for SEA evaluation reports?**

A. The common reporting scale established by the Secretary is currently the NCE.

Q4. **May an SEA exclude an LEA's out-of-level test results from the report to the Secretary?**

A. No. Since out-of-level testing is generally employed to improve the validity of test scores, there is no valid reason for excluding these results.

Q5. **May a State implement a sampling plan for collecting and reporting evaluation information from its LEAs for aggregated achievement data to be reported to the Secretary?**

A. Yes. An SEA may use a sampling plan in its evaluation of Chapter 1 programs. The proposed sampling plan must be submitted to the Secretary for approval, prior to being implemented. The sampling plan must be designed to ensure that reliable and representative data for the LEAs in the State will be provided in any school year.

Q6. **How often must the SEA's sampling plan be reviewed?**

A. The sampling plan must be reviewed at least once every three years to ensure that it is providing reliable and representative data.

Q7. **What should an SEA do if changes in its sampling plan become necessary?**

A. If the sampling plan requires changes, the SEA must submit the new plan to the Secretary for approval prior to implementation.

Q8. **Is guidance available for SEAs desiring to develop a sampling plan for collecting and reporting evaluation information from its LEAs?**

A. Yes. A document entitled "Guidance for Developing a Plan to Sample Local Chapter 1 Programs for State Chapter 1 Evaluations" provides detailed guidance in this area and is available from the office of Compensatory Education Programs, U.S. Department of Education.

Statutory Requirements

Sections 1012(b), 1020, and 1021 of Chapter 1 of Title I, ESEA

Regulatory Requirements

Sections 200.6, 200.20, 200.37-200.38, and 200.80-200.89

Introduction

Program improvement requirements are divided into two areas--school program improvement and student program improvement--and include activities by both LEAs and SEAs. Basically, an LEA must (1) establish desired outcomes in its application and define substantial progress toward meeting those outcomes; (2) make certain decisions regarding aggregate performance; and (3) review annually its Chapter 1 program to determine if it has succeeded in raising achievement levels of students, aggregated by school, and is making substantial progress toward meeting the desired outcomes, in terms of basic and more advanced skills all children are expected to master, that the LEA has included in its application. In the case of school improvement, if the review shows that, in the aggregate, Chapter 1 participants in a school have not met either or both of the two criteria, the LEA must develop a plan to improve the Chapter 1 program. If after this plan is in operation for a full school year, the school still is unable to meet either the aggregate performance or substantial progress toward desired outcomes criteria, the LEA and SEA must jointly develop a plan to improve the Chapter 1 program, and must annually review and modify the plan until the two criteria are met.

In the case of an individual student who fails to show gains in achievement or to make substantial progress toward meeting desired outcomes, the LEA must first review each student's Chapter 1 program to see if changes are needed. If a student does not show gain or make progress for two consecutive years, the LEA must conduct a thorough assessment of the child's needs and make necessary modifications to the Chapter 1 project.

LEA Responsibilities--School Improvememt

Q1. What are the general LEA responsibilities for school program improvement?

A. An LEA must assess whether Chapter 1 children in each school as a whole are showing improvement. If not, the LEA is required to take action until improvement is shown. If Chapter 1 children in the aggregate do not show improvement as measured by the national standards in §§200.80-200.89 or make substantial progress toward meeting desired outcomes in terms of the basic and more advanced skills all children are expected to master, the LEA, in cooperation with the school, must develop and implement a plan to improve the Chapter 1 project in that school. If after one full school year of operation that plan is not successful, the LEA and the SEA must jointly develop a plan for program improvement in that school and continue reviewing and revising that plan until the improved performance of Chapter 1 children in the school in the aggregate is sustained over a period of more than 12 months.

Q2. **What factors should LEAs consider in establishing desired outcomes and measuring progress toward meeting them?**

A. The Act and the Conference Report accompanying it make clear that Congress' intent is that desired outcomes be expressed in terms of basic and more advanced skills all children are expected to master. For desired outcomes such as those to be measured by performance on State or local CRTs, desired outcomes for Chapter 1 students should be commensurate with those for other children in the State or LEA. If the State sets mastery goals for its test, then, consistent with the purposes of the Act, those goals also apply to the Chapter 1 children. If an LEA has established a set of skills it expects children to attain at various points in their education, such as the end of third grade, then these skills are the appropriate desired outcomes for Chapter 1 children.

Q3. **Must an LEA state its desired outcomes in terms of both basic and more advanced skills?**

A. Yes. Section 1012(b) of Chapter 1 requires that the application contain desired outcomes "in terms of basic and more advanced skills all children are expected to master...." Certain desired outcomes, such as raising scores on CRTs, may measure progress toward basic and more advanced skills at the same time if the CRT addresses both areas. In those instances, while it would be helpful to differentiate progress separately for both areas, it may not be possible to do so and is not required.

Q4. **What are some examples of desired outcomes and substantial progress toward meeting them?**

A. As stated in §200.6 of the regulations, desired outcomes are the goals an LEA sets to help Chapter 1 children succeed in the regular school program, attain grade level proficiency, and improve achievement in basic and more advanced skills. These goals may be based on any outcome the LEA identifies, provided it measures success in one of the three areas included above. At a minimum, the outcomes must be stated in terms of aggregate performance; however, LEAs are strongly encouraged to develop other desired outcomes specifically related to their Chapter 1 programs. Aggregate performance alone may not portray a full picture of the effectiveness of Chapter 1; additional desired outcomes can help complete that picture.

In developing desired outcomes for the project to be included in the LEA's application to the State, the LEA may wish to specify what it hopes to achieve during the project period. For three-year applications, it would be appropriate for the LEA to state what it hopes to achieve for the entire project period. It may state how far along it expects to be at the end of each year--i.e., what would constitute substantial progress each year toward meeting its three-year desired outcome.

Following are some illustrations of how this may be stated:

1. The LEA has specified skills, in terms of both basic and more advanced skills, it expects all children to attain at the end of grades 3, 4, and 5. At present, some percent of children in Chapter 1 fail to attain the LEA's stated skill level. During the three-year project period, the LEA establishes a desired outcome that Chapter 1 children will attain the appropriate skill level in each grade. At the conclusion of the first year, 70 percent of the Chapter 1 children will achieve the expected skill level; at the end of the second year, 80 percent will attain the level; and at the end of the third year, all Chapter 1 children in grades 3, 4, and 5 will attain the expected level.

2. The LEA specifies skills that are appropriately measured by standardized tests. The LEA will measure progress as follows: children participating in the project for three years will show an average gain of 8 NCEs in both basic and more advanced skills; those in the project for a year will show an average gain of 2 NCEs in each area; those in the project for two years will show an average gain of 5 NCEs both in basic and more advanced skills. Substantial progress will be measured by determining if, for each year, children attain the gains specified.

3. The LEA specifies skills included in a State competency test as a desired outcome for Chapter 1 children. The LEA will measure progress as follows: over the three-year period, rates for successful passage of the State minimum competency test by Chapter 1 children, in grades in which the test is given, will increase from the current level of 60 percent to 70 percent. Substantial progress for the first year will be an increase to 62 percent, for the second year an increase to 64 percent.

4. Retention in grade indicates failure to attain mastery of basic and more advanced skills expected of all children. Therefore, the LEA will measure progress as follows: over the three-year period, the percentage of children retained in grade will decrease from the current level of 15 percent to 8 percent. Substantial progress for the first year will be a reduction to 12 percent, for the second year to a reduction of 10 percent.

5. Dropout rates are indicators of students' failure to achieve in basic and more advanced skills. The LEA will measure progress as follows: an LEA's current dropout rate is 40 percent. It sets a desired outcome to reduce the rate to 30 percent over a three-year period. Substantial progress will be reduction to 37 percent at the end of the first year and 34 percent at the end of the second year.

In these examples, substantial progress has been given for each desired outcome; LEAs may, however, measure substantial progress in other ways, such as successfully meeting goals in some of their desired outcomes; meeting goals in certain grade levels; or meeting goals in a percentage of the grade levels included in the project.

Q5. **What is a local annual review?**

A. The local annual review (§200.38(a)) is a process whereby the LEA determines the effectiveness of the Chapter 1 project in each project school in terms of aggregate performance and desired outcomes stated in the LEA application.

The result of the local annual review at a minimum is a list of project schools that showed no improvement or a decline in aggregate performance or that did not make substantial progress toward meeting the LEA's desired outcomes.

The LEA must make the results of the review available to teachers, parents of Chapter 1 students, and other appropriate parties, including principals of schools attended by Chapter 1 children.

Q6. **In addition to examining the effectiveness of the Chapter 1 program in terms of aggregate performance and desired outcomes, what other requirements for school improvement are part of the local annual review process?**

A. The local annual review must also determine if improved performance for those Chapter 1 schools implementing a joint school improvement plan has been sustained for a period of more than 12 months (§200.38(b)(6)(iv)(C)). The results of the annual review must be used to improve the LEA's Chapter 1 program.

Q7. **Must an LEA take into account success of Chapter 1 children in the regular school program in its annual review to determine if program improvement is needed?**

A. Section 200.35(a)(1)(ii) requires an LEA to review Chapter 1 children's progress in the regular school program as part of its evaluation, but the LEA is not specifically required to do so in its annual review under §200.38(a). However, LEAs may include success in the regular program as a desired outcome for the project, in which case failure to make substantial progress toward meeting it would place that school in program improvement. Since success in the regular program is a specific purpose of Chapter 1 included in section 1001(b) of the Act, stating desired outcomes in terms of success in the regular program is appropriate and LEAs are encouraged to do so.

Q8. **Who must participate in the local annual review?**

A. A local annual review must be done for each Chapter 1 project school. The statute and regulations do not specify who must be included in the review process. It may be possible that the local annual review could be conducted by only the Chapter 1 director or a designated individual in a school. The best practice, however, would be to involve a number of parties from the school who are concerned about the effectiveness of the Chapter 1 program. These could include the building principal, regular classroom teachers, Chapter 1 teachers, members of the school or district improvement team, and Chapter 1 parents.

Q9. **What timelines apply to the local annual review process?**

A. The local annual review process must be completed in time to make necessary school program improvement decisions, and before the SEA requires LEA data for the Annual Performance Report.

Q10. **How should the performance of Chapter 1 students enrolled in private schools be included in the local annual review?**

A. If the instructional approaches and service delivery systems for public and private school children are substantially the same, the LEA should review the effectiveness of the Chapter 1 project in improving the performance of all participants--public and private school children. Results for children enrolled in private schools should be included with the results for participants in the public schools that private school children would have attended if they were not enrolled in private schools.

On the other hand, if the approaches and delivery systems for private school children are different from those for the public school children, the LEA should review the progress of public and private school children separately. If the services for children enrolled in private schools are the same for all private school children, the LEA may review the progress of these children as if they were all in one school.

Q11. **What factors must be considered in determining whether a school is in need of program improvement activities?**

A. There are two factors that must be considered:

1. No improvement or a decline in aggregate performance, in basic and more advanced skills, as measured by the national standards described in §§200.80-200.89 of the regulations. A school must begin program improvement activities if it fails to show gains in aggregate performance, in either basic or more advanced skills, measured in terms of NCEs.

2. Failure to make substantial progress toward meeting the desired outcomes the LEA has included in its application.

Q12. **Are achievement data aggregated for school improvement purposes by subject area across grade levels, or across schools?**

A. Program improvement requirements are focused at the school building level. Therefore, achievement data are to be aggregated by subject area for all grades. For program improvement purposes the achievement data are not aggregated for more than one school.

Q13. **May Chapter 1 children in preschool, kindergarten, and first grade be included in the aggregate performance data considered by the LEA as part of the local annual review?**

A. No. LEAs may not include data from children at these grade levels in determining aggregate performance because such data may be unreliable and could lead to distorted overall results. The evaluation of the progress of these students must be reviewed separately from grades 2-12 results. The review must be based on substantial progress toward meeting the LEA's desired outcomes.

Q14. **Must data from an annual testing cycle be the basis for determining no improvement or a decline in aggregate performance?**

A. Yes. The minimum standard is a positive NCE gain measured on an annual testing cycle (spring-spring or fall-fall).

Q15. **May an LEA use "confidence intervals" or "error bands" in making determinations about which schools must undergo program improvement activities?**

A. No. Although these analytic tools are useful for understanding and interpreting results of evaluations, they may not be used for making decisions about whether schools are in need of program improvement. The following example points out some of the problems associated with this issue:

> A school building has an aggregate mean gain score for its predominant Chapter 1 program (reading) of -1 NCE with an error band of +/-3 NCEs. Looking at the mean only, this school would be identified for program improvement activities. In an effort to avoid program improvement, an LEA may argue that the error band indicates that the true score lies between +2 NCEs and -4 NCEs, and that since the top end of the range is above the statutorily required minimum, program improvement is not needed. However, there is an equal likelihood that the true score is as low as -4 NCEs. Therefore, although LEAs may use error bands to help interpret data, selection of schools for program improvement activities must be based on simple means or medians.

Q16. **If a school has a very small number of Chapter 1 students and is concerned that the scores of a few students may skew the mean NCE gain for the school, what alternatives are available?**

A. If an LEA feels that using the mean NCE gain to determine the effectiveness of the Chapter 1 program in its schools might not be appropriate because of the possible influence of extreme scores, then that LEA may use the median score in place of the mean. However, the same choice of the mean or median score must be made for all the LEA's Chapter 1 schools.

When reporting Chapter 1 LEA evaluation results to the SEA, the LEA must still use the mean for aggregation and reporting purposes.

Q17. **Does the use of the median as opposed to the mean have advantages in other than small schools?**

A. Yes. Medians have properties that may make them desirable in various settings. They greatly diminish the influence of extreme scores even in larger samples. Results based on medians are also intuitively easy to understand and explain. One can simply state that half the students performed above (or below) a certain level. For program improvement purposes, it would be easy to determine, based on the median, that half of the students in a school did (or did not) benefit from the program, i.e., showed a gain greater than zero.

Q18. What is the Department's position on use of the median?

A. The Department endorses the use of the median for program improvement (but not reporting) purposes. However, the LEA must use them uniformly in all its Chapter 1 buildings. The LEA may not use medians or means selectively in individual schools to avoid program improvement.

Q19. Must both basic and more advanced skills be reviewed to determine whether schools have met aggregate performance standards in the local annual review?

A. Yes. Aggregate performance must be determined for basic and more advanced skills and both areas must be included in the local annual review. Any school showing no improvement or a decline in the aggregate performance of participating children for a 12-month period, in either type of skill, must be identified as needing program improvement.

Q19a. Must aggregate achievement performance be determined in basic and more advanced skills in all Chapter 1 subject areas in the school?

A. Not necessarily. The LEA need consider only the area of primary focus of its Chapter 1 program in measuring aggregate performance gains. If two or more subject areas are equally addressed, however, it must measure aggregate achievement performance in all of them.

Q20. May States or LEAs set different expected desired outcomes, in terms of achievement gains for schools or students, depending on their pre-test scores?

A. Section 1012(b) of Chapter 1 requires LEAs to describe their desired outcomes "in terms of basic and more advanced skills all children are expected to master." In discussing the phrase, the Conference Report states it means the project sets "academic expectations not substantially different from those expected for other students of the same age or at the same grade level" (Conf. Rept 100-567, 100th Cong., 2nd Sess., April 13, 1988, p. 322). Therefore, the final desired outcomes should not vary among students or among schools. In seeking to achieve these outcomes, LEAs should consider what differing resources and approaches are appropriate for different Chapter 1 children and Chapter 1 schools.

Q21. What is the relationship between desired outcomes and aggregate performance with respect to program improvement requirements?

A. There are several provisions that must be taken into consideration in determining whether a school is in need of program improvement. First, under section 1021(b) of the Act, either failure to make substantial progress toward meeting desired outcomes or failure to demonstrate a gain in aggregate performance would identify a school as in need of program improvement. Second, under sections 1012(b) and 1019 of the Act, both desired outcomes and aggregate performance must be measured in terms of basic and more advanced skills. Finally, under section 1012(b), desired outcomes for each area of instruction must be included in an LEA's application. Thus, a failure to make substantial progress toward meeting desired outcomes or to gain skills in each instructional area potentially could result in a school being required to develop a program improvement plan.

The regulations permit an LEA the option to consolidate, to a certain extent, these indicators of need for program improvement. First, §200.38(b)(2) permits an LEA to determine the aggregate performance of a school in only the instructional area that is the primary focus of the Chapter 1 program in that school. Thus, in school A, if 75 percent of the children receive reading and only 25 percent receive mathematics, the LEA could determine aggregate performance--in basic and more advanced skills--in just reading. However, if the Chapter 1 program in school B provides services in reading and mathematics with relatively equal emphasis, the LEA would have to determine aggregate performance--in basic and more advanced skills--in both instructional areas.

As stated above, the LEA must also have desired outcomes, expressed in basic and more advanced skills, for each instructional area. Section 200.6(c) of the regulations permits an LEA, if it chooses, to express desired outcomes in terms of only aggregate performance. Under this option, an LEA could determine whether school B above needs program improvement on the basis of aggregate performance, in basic and more advanced skills, in reading and mathematics. Of course, the LEA could also establish--indeed, is encouraged to establish--other desired outcomes that exceed the minimum gains required for aggregate performance or that are measured by other indicators, such as CRTs, to achieve a more complete picture of the success of the Chapter 1 program in that school.

For school A in the example above, the LEA expresses its desired outcomes for reading in terms of aggregate performance. Obviously, the LEA could also express desired outcomes for reading through other appropriate indicators. If the LEA selects the option in §200.38(b)(2), it would not have aggregate performance results for school A in mathematics. Thus, because it must have desired outcomes for each instructional area, the LEA could express its outcomes for mathematics in other terms, such as CRTs. It could also use aggregate performance in mathematics. However it chooses to act, the LEA must measure its substantial progress toward meeting desired outcomes in each instructional area to determine if a school is in need of program improvement.

Q22. **May an LEA ignore an instructional area that is not primary focus in identifying schools in need of program improvement?**

A. No. The LEA must determine if progress is being made in all instructional areas in its Chapter 1 program. If the LEA exercises the option to determine aggregate performance in only the instructional area that is the primary focus of the Chapter 1 program, the LEA must still determine that the school has made substantial progress toward meeting the desired outcomes for other instructional areas. If the LEA has established desired outcomes for the instructional area that is a secondary focus other than aggregate performance, it must assess whether the project has made substantial progress toward the stated desired outcomes. If substantial progress is not made, a school must be identified for program improvement.

In the case of an LEA that has expressed its desired outcomes only in terms of aggregate performance, the LEA must use aggregate performance for a secondary focus area because there are no other desired outcomes to use to determine the success of the project. Therefore, notwithstanding the option to use aggregate performance for only the instructional area of primary focus, the LEA in this case must also use aggregate performance for the instructional area that is a secondary focus.

Q23. **If a student receives services in more than one Chapter 1 school in an LEA during the year, for which school should that student's achievement gains be aggregated for the local annual review?**

A. The child's achievement scores should be included in the annual review for the school that provided the longest period of service to that child.

Q24. **How are aggregate performance scores used with respect to program improvement?**

A. No gain or a decline in aggregate performance scores in the subject that is the primary focus of the Chapter 1 program, measured according to the national standards for evaluation, causes a school to be identified for program improvement. If reading or mathematics is the primary focus, aggregate performance must be measured for both basic and more advanced skills, and no gain or a decline in either identifies a school as needing program improvement. If a language arts test is used to measure aggregate performance, only the total score that test produces is used, since there is no subtest score to measure more advanced skills.

Q25. **What is meant by no gain or a decline in aggregate achievement?**

A. In terms of NCEs, no change or a loss in NCEs.

Q26. **If an LEA uses a norm-referenced language arts test that does not provide measurement of more advanced skills to measure aggregate performance, must it establish desired outcomes to measure performance in more advanced skills in language arts?**

A. Yes, but the outcomes need not be expressed in terms that may be converted to NCEs.

Q27. **Suppose a K-4 school expresses its desired outcomes in terms of aggregate performance for grades 2-4, and uses another outcome for children in grades K-1. Although the aggregate performance scores for children in grades 2-4 show a decline, the children in grades K-1 make substantial progress toward meeting desired outcomes. Must the school be identified for program improvement?**

A. Yes, but it may limit its plan to grades 2-4.

Q28. May an LEA establish a minimum amount of participation in the project a child must have in order to be included in aggregate performance?

A. All children who were enrolled in the project for the entire year must be included, even if, during the year, some of those children did not attend or participate in some of the Chapter 1 project. However, children who enter the project well into the school year or leave well before the school year ends need not be included, even if the LEA has pre- and post-test scores on them.

Q29. When may an LEA apply for program improvement assistance available under section 1405?

A. As soon as it has identified a school or schools in need of program improvement. States should establish procedures to provide assistance to LEAs.

Q30. Must an LEA submit any plans for schools needing program improvement to the SEA for review and approval?

A. Section 1021(b)(1)(B) requires only that the LEA submit the plan to the SEA but does not require that the SEA approve the plan. The SEA may, however, comment on the plan and provide assistance to the LEA.

Q31. Do school improvement plans have to address each school, including schoolwide project schools, separately?

A. Yes. These plans are school-based and established for each school identified for program improvement. They must be developed in coordination with staff at the school. This may likely result in different approaches, different costs, and different Chapter 1 projects among an LEA's schools.

Q32. May an SEA rather than the LEA identify schools as needing program improvement?

A. If an SEA has information on schools that indicates a need for program improvement, it may and should share that information with the LEA. Actual identification for the initial plan, however, is done by the LEA.

Q33. If a school has been identified as being in need of program improvement, may it focus its Chapter 1 program on improving the entire education program at that school?

A. Except in the case of a schoolwide project, Chapter 1 funds may be used only to provide supplemental services to Chapter 1 participating children and not for general school improvement. The Chapter 1 project in a school should go hand-in-hand with local and State-supported activities to improve the school's general instructional program. For instance, a change in approach or materials in the basic reading program of the school should be accompanied by revisions to the Chapter 1 reading activities so that those activities will be more likely to assist Chapter 1 students succeed in the regular instructional program of the school.

Q34. What action may an SEA take if an LEA fails to develop or implement a required school improvement plan?

A. Section 1021(b) of Chapter 1 requires that, for schools identified as being in need of program improvement, an LEA shall develop and implement in coordination with such school a plan for program improvement, and requires that the plan be submitted to the SEA. As with other requirements, the SEA is responsible for ensuring LEA compliance with this provision. Failure by an LEA to comply would compel the State to implement appropriate enforcement mechanisms.

Q35. If an LEA determines that a school needs program improvement and decides to implement a schoolwide project in that school, may the schoolwide project plan serve as the program improvement plan?

A. Yes, provided the process used in developing the schoolwide project plan meets the requirements of §200.38.

Q36. Are local conditions restricted to only those described in the statute and regulations?

A. Yes. Section 1021(e) includes only five specific conditions. There are no other local conditions that may be considered.

Q37. How are local conditions to be used during the program improvement process?

A. As stated in §200.38(c) of the regulations, local conditions are to be considered throughout the program improvement process. This is especially true of the conditions contained in §200.38(c)(1)(i-iii). For instance, an LEA knows prior to starting its Chapter 1 project that, in two of its schools, there is a higher degree of educational deprivation than in other Chapter 1 schools. In allocating resources to those schools, it should take that local condition into account. Should the LEA not do so, and subsequently determine that the school failed to show improvement, it may not use that local condition to excuse that school from program improvement. On the other hand, if, during the school year, changes occur in a school that could not be foreseen, such as a large increase in mobility, then, in determining whether program improvement is needed, the LEA may take that local condition into account.

Q38. As a result of an approved equating study, an LEA is using a State assessment test at grades 4, 6, and 8 and a different commercial test at grades 3, 5, and 7 to evaluate its Chapter 1 reading project. The results show large gains in one grade followed by large losses for the next grade. After careful review of the results, the LEA determined that these data are invalid due to the use of a different test each year although they appeared to equate adequately. May the LEA claim a local condition to invalidate the results?

A. Yes, but this may only be done once. Equating studies provide only estimates of what results would have been had the equated test been used for the "second score." Where actual experience using equated tests show that results are invalid or unreliable, the use of the equated tests must be discontinued by all districts in the State that are using them.

Q39. **In allocating resources to schools, either initially or subsequent to implementation of a program improvement plan, may an LEA allocate different amounts per child to different schools?**

A. Yes. In allocating resources to schools, §200.33(a) requires LEAs to take into account the number of eligible students, their educational needs, and the extent of educational deprivation of children in each school. Further, §200.38(c)(2) requires LEAs to take into account local conditions in allocating resources to its Chapter 1 schools. Finally, in implementing program improvement plans, LEAs should provide resources to schools based on the cost of these plans.

Q40. **Should the scores of LEP children be aggregated with scores of other children to determine aggregate performance?**

A. If the student was, in the opinion of the LEA, sufficiently proficient in English to have had a valid measure of educational deprivation determined by a standardized pre-test, then that student's post-test score, and the gain, should be included in the school aggregation. If the student, however, was determined to be educationally deprived based on other methods, the scores should not be included.

Q41. **Must an LEA establish desired outcomes for LEP children whose achievement cannot be validly measured by standardized test scores?**

A. Yes.

Q42. **When should an LEA begin to plan and implement program improvement activities in a school?**

A. As soon as the school has been identified as being in need of improvement. While the regulations require that full implementation of the plan take place no later than the beginning of the second school year following the year during which the school did not show improvement or meet its desired outcomes, this is the outside time limit for full implementation. Only when the plan includes a major redirection of the program--for instance, from a pull-out project to a schoolwide project--should the maximum time be used. In most instances, plans should be put in place during the year immediately following the one upon which the need for improvement was determined--if not at the beginning, then during the school year. If full implementation is not possible, portions of the plan should be put in place. When a local plan is implemented during the school year, rather than at the year's beginning, the success of the plan is measured on the basis of information gathered during the subsequent year. Therefore, the success of the local plan is determined after the plan has been implemented for an entire school year.

Q43. **How will districts on a fall-to-fall testing cycle fit into the timeline?**

A. Clearly these LEAs will have more difficulty in implementing program improvement plans, since information identifying schools in need will not be available until after the school year has begun. Nevertheless, these LEAs must implement portions of plans during that first year, whenever possible, and must fully implement plans during the subsequent school year.

Q44. **On the basis of a post-test in spring, an LEA determines a school is in need of program improvement. The plan the school and the LEA develops provides additional materials and supplies to the school and is implemented the following fall. If the school does not show gains during that year, must the LEA and SEA develop a joint plan for it?**

A. Yes.

Q45. **If there are "10 or fewer" students in the Chapter 1 program in a school during the program year, does a program improvement plan need to be developed?**

A. No. Schools that serve 10 or fewer Chapter 1 students during the entire school year are exempt from developing a school improvement plan. However, the LEA must conduct a local annual review for such schools and, under student program improvement requirements, identify individual students who fail to demonstrate improvement or substantial progress.

Q46. **If a school has provided a full year's service to more than 10 students but has both pre- and post-test scores on fewer than 10, is the school exempt from developing a program improvement plan?**

A. No. The only exemption from having to develop a program improvement plan is for a school that served 10 or fewer students in the Chapter 1 program for the entire school year.

Q47. **May improvement plans be developed for one grade or one subject area if that is the only area that shows a loss?**

A. Yes. Improvement plans are developed for individual schools, but those plans need not propose changes to the Chapter 1 project for grades or subject areas in which students are already demonstrating improvement and substantial progress.

If two subject areas are equally addressed by Chapter 1, failure to show gain in either of the subject areas will result in identification of a school for program improvement. Program improvement efforts should focus on the subject area or areas in which Chapter 1 children fail to show gain or do not make substantial progress toward desired outcomes.

LEA Responsibilities--Student Program Improvement

Q48. **What are an LEA's responsibilities for student program improvement?**

A. Students not showing gains in performance or making substantial progress toward meeting desired outcomes must be identified and revisions to their Chapter 1 services considered. If after two years these students still do not gain in performance or make substantial progress, the LEA must conduct a thorough assessment of their needs and, where appropriate, revise the services to meet those needs. For students in a school undergoing program improvement activities, those activities may meet the requirement for student program improvement as well.

Q49. Is the definition of "no improvement or a decline" as it is used in §200.38(d)(1)(ii) the same for individual students as it is for schools?

A. Yes. Improved performance for students is defined in the same manner as it is for schools--that is, a pre-test to post-test change in NCEs that is greater than zero.

Q50. When assessing individual student progress, how reliable are the results of group-administered, nationally normed tests?

A. The standard error of measurement associated with any individual test score means that judgments made about an individual's performance based solely on test results may be inaccurate. For this reason, it is recommended that multiple performance measures (e.g., performance on classroom assignments and tests, CRTs, in-class performance, progress through the curriculum, etc.) be considered when planning changes in the Chapter 1 program to meet the needs of students who do not demonstrate improved performance on an achievement test.

Q51. Must an LEA identify students for program improvement who attend schools that have not been identified as needing program improvement?

A. Yes.

Q52. Does student program improvement apply to students attending private schools?

A. Yes.

Q53. How can student program improvement be implemented in areas where student mobility is high?

A. As with school program improvement, in order to determine if student program improvement is warranted, an LEA must have annual test information and measures of success in achieving desired outcomes from the beginning to the end of a school year. Students who move out of the district or to schools with no Chapter 1 project need not be identified for student program improvement. However, children who move from one Chapter 1 school to another must be followed, and, if their performance warrants, provided with student program improvement activities.

Q54. How can substantial progress toward desired outcomes be applied to individual students when progress is measured in terms of percentages of children attaining specified levels of learning?

A. Those students not reaching the level specified will be identified for student program improvement. Both school and student centered efforts should focus on meeting the desired outcome.

State Responsibilities

Q55. **Must the State set standards for program improvement or may it allow each LEA to do so?**

A. Section 200.37(a)(2)(ii) of the regulations requires that the SEA's plan include the "objective measures and standards the SEA and LEAs will use" to determine success of the Chapter 1 program, and that the SEA "may establish standards" that will be included in the plan. Therefore, the SEA may establish standards or allow its LEAs to do so. In the latter circumstance, the standards of each LEA become a part of the State's program improvement plan. Either the SEA or LEAs, in expressing desired outcomes in terms of aggregate performance, may and are encouraged to set standards higher than no gain or a decline in aggregate performance to identify schools in need of program improvement.

Q56. **Must the State's program improvement plan be approved by the committee of practitioners?**

A. Section 1020(a) of Chapter 1 requires that the State's plan be developed "in consultation with a committee of practitioners." This does not require that the committee members, either as a whole or individually, be in total agreement with the plan. Rather, the requirement envisions continuous consultation with the committee throughout development of the plan.

Q57. **What should be the timeline for joint SEA/LEA program improvement?**

A. While it is possible a maximum of three years could pass between identification of a school in need of program improvement and implementation of a joint plan, it should happen only in those cases where the complexity of first the LEA plan and then the SEA plan precludes the more immediate full implementation. LEAs must put in place as soon as possible those changes that can be made, and implement the full plan as soon as possible.

Q58. **Must an SEA provide assistance to all schools identified as needing a joint plan or may it target its assistance in some of those schools?**

A. It must provide assistance to all schools so identified.

Q59. **If no funds are available under section 1405, what is a State required to do?**

A. At a minimum, States must follow the progress of any school identified as needing program improvement, work with LEAs to develop joint plans for each school that, after one full year of operation under a locally developed plan, fails to show gains in aggregate performance or make substantial progress toward meeting desired outcomes, and ensure that program improvement assistance is provided to each school implementing a joint plan. The State is not required to make funds available or make assistance available from providers other than the SEA.

Q60. **What happens if the SEA and the LEA cannot jointly agree on an SEA/LEA plan for program improvement?**

A. The SEA may refuse to approve that part of the LEA's application or update, including budgets, related to the school or schools for which no agreed upon joint program improvement plan exists. LEAs and SEAs should be aware that such action deprives children of Chapter 1 services pending final agreement, and should make every effort to avoid this situation.

Q61. **Must the selection of providers of technical assistance to schools undergoing program improvement be decided prior to an SEA's commitment of section 1405 funds to provide it?**

A. Yes. Section 1405 states that parents of participating children, school staff, the SEA, and the LEA must jointly agree on who shall provide technical assistance to each school. Since the SEA cannot know in advance what providers will be selected, it is unable to commit funds. SEAs may make plans, however, prior to actual expenditures. For instance, SEAs may do either or both of the following:

1. Hire program improvement specialists, using Chapter 1 administrative funds authorized under section 1404, and then charge these persons' time, as jointly agreed by the parties in section 1405(b)(3) of the Act, for program improvement activities to the 1405 account.
2. Enter into cost reimbursable agreements with other possible providers who are selected and perform the duties.

Q62. **How does the requirement to measure sustained effects under program improvement (section 1021) relate to the sustained effects requirement under evaluation (section 1019)?**

A. The requirement in section 1019 applies to all LEAs, and either through sampling or a designed study should yield information about the Chapter 1 program in the LEA as a whole. It must be done at least once every three years. Under §200.39(a)(2) of the regulations, the sustained effects requirement under section 1021 applies to those schools implementing a joint LEA/SEA school improvement plan and implements the requirement in section 1021(h) of Chapter 1 that the SEA and the LEA continue to revise the joint plan until improved performance "is sustained over a period of more than one year." This requirement must be met annually.

STATE ADMINISTRATION

Statutory Requirements

Sections 1451, 1404(b), and 1405 of Chapter 1 of Title I, ESEA

Regulatory Requirements

Sections 200.70 and 200.72-200.75

Introduction

The Act sets forth several new provisions under State administration and most of them are contained in sections 1451, 1404(b), and 1405. Section 1451(a)(1) of Chapter 1 is implemented by §200.70(a) of the regulations, which provides that a State has the authority to issue rules, regulations, or policies for the Chapter 1 LEA program so long as they are consistent with the provisions of the Chapter 1 statute, regulations, and other applicable Federal statutes and regulations. Section 1451(a)(2) of Chapter 1 and §200.70(b) of the regulations stipulate, however, that State regulations or policies may not be issued that limit an LEA's decisions affecting Chapter 1 funds regarding grade levels to be served; basic skill areas to be addressed (such as reading, mathematics, or language arts); licensed and certified instructional staff to be employed; instructional settings, materials, or teaching techniques to be used; and other essential support services (such as counseling and other pupil personnel services). These limits do not preempt an SEA's authority to review and approve an LEA's application, however, or relieve an SEA of its responsibility to ensure compliance with applicable program requirements.

Section 1451(b) of Chapter 1 is implemented by §200.70(e) of the regulations. This regulatory provision requires the SEA to convene a State committee of practitioners to review, before publishing, any major proposed or final rule, and to ensure that the committee reviews all other nonmajor rules before publication, but not necessarily in a meeting. Additionally, if a State issues policies, rather than regulations, that the SEA and LEAs are required to follow, the State must comply with the same consultation requirements for issuing rules and regulations.

The only instance in which an SEA may issue a major rule or regulation relating to the administration or operation of Chapter 1 programs without consulting the committee of practitioners is in an emergency when time constraints prevent consultation. However, the committee must be convened to review the emergency rule or regulation before it is published in final form.

A limit is now imposed on the percentage of State administration funds that may be used for indirect costs by statutory and regulatory provisions in section 1404(b) and §200.72(a)(2), respectively.

Section 1405 of Chapter 1 makes funds available for direct educational services in schools implementing program improvement plans. It requires parents of participating children, school staff, the LEA, and the SEA to jointly agree to the selection of technical assistance providers and the best use of funds. Section 200.72(b) of the regulations implements these statutory requirements.

State Regulations--General

Q1. May an SEA limit the percentages proposed in an LEA budget for supplies, materials, or other categories?

A. No. An SEA does not have the authority to impose limitations on reasonable expenditures to implement an effective program that are proposed in an LEA's budget and are supported by the LEA's assessment of the special educational needs of Chapter 1 children.

Q2. May the SEA issue regulations governing an LEA's parental involvement activities?

A. The SEA may issue regulations concerning parental involvement so long as the requirements are consistent with Chapter 1 and regulations, but it does not have the authority to dictate the type of parental involvement activities that an LEA chooses to conduct. The SEA does have the authority and the responsibility, however, to review LEA decisions concerning the use of Chapter 1 funds to ensure compliance with applicable requirements.

Q3. Must the SEA differentiate between State and Federal requirements?

A. Yes. In accordance with §200.70(d) of the regulations, the SEA must identify any State-imposed requirement having to do with the administration and operation of Chapter 1 LEA programs, including those based on State interpretations of any Federal law, regulation, or guideline, as a State requirement.

Review By Committee Of Practitioners

Q4. When is an SEA required to convene its committee of practitioners?

A. Before an SEA issues major rules or regulations for the Chapter 1 LEA program, it is required to convene its State committee of practitioners to review these rules.

Q5. If State law requires the issuance of proposed rules prior to publishing the rules in final form, does the committee of practitioners have to be convened to review both the proposed and final rules?

A. Yes. If the rules are major and State law requires the use of a proposed and final publication process, the committee of practitioners must be convened to review both the proposed and final versions of the rules prior to publication.

Q6. Must the committee of practitioners be convened to review nonmajor rules and regulations before publication?

A. No. The committee of practitioners must review the nonmajor rules and regulations, but the committee does not necessarily have to be convened to conduct this review. Responses may be received in writing or by telephone, including conference calls.

Q7. When a State issues policies (rather than rules or regulations) that the SEA and LEAs are required to follow, what responsibility does the committee of practitioners have for reviewing these policies?

A. The State must comply with the same consultation requirements for reviewing policies that is does for reviewing rules or regulations. That is, it must convene the committee of practitioners to review all major policies prior to publication, and ensure that all other nonmajor policies are reviewed by the committee.

Q8. May an SEA issue a major rule or regulation without consulting the committee of practitioners?

A. Yes. In an emergency situation when a major rule or regulation must be issued within a very limited amount of time, the SEA may issue the rule or regulation without consulting the committee of practitioners. However, immediately after issuance, the SEA must convene the committee to review the emergency rule or regulation prior to its publication in final form.

Q9. Section 200.70(e)(3)(ii) of the regulations requires an LEA majority on the committee. Which practitioners should be counted as LEA representatives?

A. The committee of practitioners must include administrators, teachers, parents, members of local boards of education, and representatives of private school children. Local administrators, teachers, and local board members are generally representative of LEAs and therefore could be counted appropriately as such.

Funds For State Administration

Q10. Is the SEA limited in its use of State administration funds for indirect costs?

A. Yes. Section 1404(b) of Chapter 1 and §200.72(a)(2) of the regulations limit the amount of State administration funds that may be used for indirect costs to 15 percent.

Funds For Implementing School Improvement Programs

Q11. May school improvement funds (section 1405 of Chapter 1) be used to hire State staff to assist with conducting program improvement activities?

A. An SEA may use section 1405 funds to hire State staff to assist with program improvement activities if the following requirements are met:

- o The LEA, parents, and staff of the school that will receive school improvement services jointly agree that this is a good use of funds.
- o The State staff provide direct educational services to schools implementing program improvement plans.

Q12. May section 1405 funds be used for State administration activities?

A. No. Section 200.72(b)(3) of the regulations specifically states that section 1405 funds may not be used for State administration. Section 200.72(b)(1) of the regulations restricts the use of these school improvement funds to direct educational services in schools implementing program improvement plans.

Complaint Procedures Of The SEA

Sections 200.73 through 200.75 of the regulations contain complaint procedures that an SEA must implement.

Q13. What complaint procedures is an SEA required to have?

A. In accordance with §200.73 of the regulations, an SEA is required to have written procedures for resolving any complaint that the SEA or an LEA is in violation of any Federal statute or regulation that applies to the Chapter 1 LEA program. These written procedures must include procedures for reviewing an appeal from a decision of an LEA and for conducting an independent onsite investigation of a complaint if the SEA determines that an onsite investigation is necessary.

Q14. Are there specific issues that the complaint procedures must address?

A. Yes. At a minimum, the SEA's complaint procedures must include the following:

- A time limit of 60 calendar days after the SEA receives a complaint to carry out an independent investigation and to resolve the complaint.
- An extension of this time limit only if exceptional circumstances exist with respect to a particular complaint.
- The right to request that the Secretary review the final decision of the SEA.

ASSIGNMENT OF PERSONNEL

Statutory Requirements

Section 1453 of Chapter 1 of Title I, ESEA

Regulatory Requirements

Sections 200.39 and 200.71

Introduction

Section 1453(a) of Chapter 1 provides that public school personnel who are paid entirely with Chapter 1 funds may be assigned limited supervisory duties that are assigned to similarly situated personnel not paid with Chapter 1 funds. Such duties need not be limited to classroom instruction or to the benefit of children participating in the Chapter 1 program. Under §200.39 of the regulations the amount of time spent on supervisory duties may not exceed the least of: the proportion of time that similarly situated non-Chapter 1 personnel at the same school site spend performing these duties; one period per day; or sixty minutes per day. The amount of time spent on supervisory duties may be calculated on a daily, weekly, monthly, or annual basis. Allowable supervisory duties may include, but are not limited to, such activities as supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms; participation as a member of a school or district curriculum committee; and participation in the selection of regular curriculum materials and supplies.

Section 200.71 of the regulations and section 1453(b) of Chapter 1 authorize SEAs to use Chapter 1 funds to pay a portion of the salary costs of employees who are assigned administrative, training, and technical assistance responsibilities for Chapter 1 and special State programs. Except as discussed below, these salary costs must be supported by appropriate time distribution records that reflect the actual amount of time spent by each employee and costs must be charged on a basis of the employee's time distribution records.

If an employee is assigned responsibilities that jointly benefit a State program and Chapter 1 programs, and the actual time spent for each program cannot be determined, §200.71(c) of the regulations provides that costs may be charged to the programs on a basis other than the actual time spent on each of the programs, provided charges are equitably distributed among funding sources. (See example under §200.71(c) of the regulations.)

Q1. Who are "similarly situated" personnel?

A. The definition of "similarly situated" personnel may vary depending on the duties to be assigned. For example, if the duty is lunchroom supervision, it may be appropriate to consider all instructional personnel--teachers and aides--as "similarly situated." In a school that has only Chapter 1-paid aides and regular classroom teachers are assigned lunchroom supervision duties, Chapter 1-paid aides could be considered as "similarly situated" and assigned to lunchroom supervision on the same basis as regular classroom teachers. On the other hand, if in this same school teachers are not assigned to lunchroom supervision, Chapter 1 aides could not be assigned to these duties because there are no "similarly situated."

In defining "similarly situated," it is important that the LEA remember the purpose of this provision: to permit Chapter 1 staff to share in certain responsibilities to alleviate the ill will sometimes created by the former prohibition against Title I staff assuming non-Title I duties. See H.R. Rept. No. 1137, 95th Cong., 2d Sess. 37 (1978). It is not to devise ways to use only Chapter 1 personnel to carry out the supervisory responsibilities in a school. Accordingly, an LEA should ensure that Chapter 1 personnel do not carry a disproportionate share of the load. Moreover, the Chapter 1 program may not be harmed by the use of Chapter 1 personnel for supervisory duties.

Q2. **May "supervisory duties" include instructional duties?**

A. Yes. Both section 1453(a) of Chapter 1 and §200.39(a) of the regulations make specific reference to limited supervisory duties that "need not be limited to classroom instruction." Thus, supervisory duties may include both instructional and noninstructional responsibilities.

Q3. **May Chapter 1 staff be assigned supervisory duties if there are no "similarly situated" non-Chapter 1 personnel at the same school site who perform the duties?**

A. No. Section 200.39(a)(1) of the regulations restricts the assignment of supervisory duties to Chapter 1 staff only when there are similarly situated non-Chapter 1 staff at the same school site who are assigned the duties.

Q4. **May Chapter 1 aides or teachers be assigned to supervise in-school suspension or detention classes?**

A. Yes, if similarly situated personnel at the school site who are not paid with Chapter 1 funds are assigned these duties, and the time spent by Chapter 1 personnel on these duties does not exceed the limits specified in the regulations.

Q5. **Is placement on an LEA's pay scale or salary schedule that reflects different levels of training sufficient to determine who is similarly situated?**

A. No. Determining who is similarly situated must be based on assigned job responsibilities.

Q6. **May a teacher or an aide who is paid partially with Chapter 1 funds and partially with local district funds be assigned non-Chapter 1 supervisory duties while on Chapter 1 salary?**

A. No. Section 1453(a) of Chapter 1 and §200.39(a) of the regulations specify that only personnel who are paid entirely with Chapter 1 funds may be assigned limited supervisory duties. However, an LEA may assign staff partially paid with Chapter 1 funds to supervisory duties during time they are paid with non-Chapter 1 funds.

Q7. May Chapter 1 personnel be assigned substitute teaching responsibilities?

A. Chapter 1 personnel may be assigned substitute teaching responsibilities if similarly situated personnel at the same school site are assigned these duties and performance of them does not exceed the time limits specified in §200.39(a)(2) of the regulations. Before an LEA uses Chapter 1 personnel for substitute teaching, however, it must ensure that truly similarly situated personnel are also used for substitute teaching. For example, it would be unallowable to define similarly situated so narrowly that few other types of personnel would qualify and, as a result, Chapter 1 personnel would carry a disproportionate share of the substitute teaching responsibilities. Moreover, the Chapter 1 program may not be harmed in order for the Chapter 1 teacher to do substitute teaching. For example, Chapter 1 classes may not be cancelled. Substitute teaching may be performed by Chapter 1 personnel only during nonteaching periods--for example, during planning periods.

Q8. May a Chapter 1 aide who works only 4 hours per day be assigned "supervisory duties" for 60 minutes per day?

A. No. Part-time Chapter 1 staff who are paid fully with Chapter 1 funds may be assigned supervisory duties only on a basis that is proportionate to the time that similarly situated full-time personnel at the same school site are assigned the same duties.

Q9. May Chapter 1 staff be assigned multiple types of supervisory duties in the same day if similarly situated personnel perform them and the time limits in §200.39(a)(2) are observed?

A. Yes. Chapter 1 staff may perform different types of supervisory duties in the same day such as homeroom for 20 minutes and bus duty for 20 minutes if similarly situated personnel at the same school site also perform different types of supervisory duties during the day and the time limits for Chapter 1 staff as specified in the regulations are not exceeded.

Q10. May the time limits specified in §200.39(a)(2) be applied individually to each supervisory duty assigned to Chapter 1 staff?

A. No. The time limits may not be applied separately to each supervisory duty performed by Chapter 1 staff. These limits apply to the total amount of time that Chapter 1 staff spend on supervisory duties. This total amount of time may be calculated on a daily, weekly, monthly, or annual basis as specified in §200.39(b). However, the cumulative time an employee spends on supervisory duties may not exceed the least of the limits in §200.39(a)(2) multiplied by the number of working days in an employee's contract.

Personnel Assigned to Chapter 1 and Special State Programs

Q11. May a method other than time distribution records be used to prorate costs when SEA staff perform duties that benefit both the Chapter 1 program and the State compensatory education program and these duties cannot be clearly distinguished?

A. Yes. As explained in §200.71(c) of the regulations, when an employee is assigned responsibilities that jointly benefit the Chapter 1 program and a State compensatory education program, and the employee cannot determine the actual time spent for each, it is allowable to charge costs to the programs on a basis other than the actual time spent on each of them. The basis that is used, however, must ensure that charges are distributed equitably among the programs. (See example in §200.71(c) of the regulations.)

Q12. When LEA personnel are assigned duties that jointly benefit Chapter 1 and special State or local programs, may the LEA charge costs to these programs on a basis other than actual time spent on specific activities?

A. Yes. Section 200.71(c) of the regulations provides that SEA personnel assigned to administrative, training, and technical assistance duties that jointly benefit Chapter 1 and special State programs may charge costs to the programs on a basis other than actual time spent on each program, provided charges are equitably distributed among funding sources. An LEA may apply the same procedures for employees assigned to duties that jointly benefit Chapter 1 and special State and local programs.

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PUBLIC LAW 100-297—APR. 28, 1988

AUGUSTUS F. HAWKINS-ROBERT T. STAFFORD ELEMENTARY AND SECONDARY SCHOOL IMPROVEMENT AMENDMENTS OF 1988

APPENDIX A

Public Law 100-297
100th Congress

An Act

Apr. 28, 1988
[H.R. 5]

To improve elementary and secondary education, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988.
State and local governments.
20 USC 2701 note.

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TITLE I—ELEMENTARY AND SECONDARY EDUCATION PROGRAMS REAUTHORIZED

SEC. 1001. AMENDMENT TO THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.

The Elementary and Secondary Education Act of 1965 (20 U.S.C. 2701 et seq.) (other than title X of such Act) is amended to read as follows:

20 USC 2701 note

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Elementary and Secondary Education Act of 1965'.

"TITLE I—BASIC PROGRAMS

"CHAPTER 1—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF CHILDREN

20 USC 2701

"SEC. 1001. DECLARATION OF POLICY AND STATEMENT OF PURPOSE.

"(a) DECLARATION OF POLICY.—In recognition of—

"(1) the special educational needs of children of low-income families and the impact of concentrations of low-income families on the ability of local educational agencies to provide educational programs which meet such needs, and

"(2) the special educational needs of children of migrant parents, of Indian children, and of handicapped, neglected, and delinquent children,

the Congress declares it to be the policy of the United States to—

"(A) provide financial assistance to State and local educational agencies to meet the special needs of such educationally deprived children at the preschool, elementary, and secondary levels;

"(B) expand the program authorized by this chapter over the next 5 years by increasing funding for this chapter by at least $500,000,000 over baseline each fiscal year and thereby increasing the percentage of eligible children served in each fiscal year with the intent of serving all eligible children by fiscal year 1993; and

"(C) provide such assistance in a way which eliminates unnecessary administrative burden and paperwork and overly prescriptive regulations and provides flexibility to State and local educational agencies in making educational decisions.

"(b) STATEMENT OF PURPOSE.—The purpose of assistance under this chapter is to improve the educational opportunities of educationally deprived children by helping such children succeed in the regular program of the local educational agency, attain grade-level proficiency, and improve achievement in basic and more advanced skills. These purposes shall be accomplished through such means as supplemental education programs, schoolwide programs, and the increased involvement of parents in their children's education.

"PART A—BASIC PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

"Subpart 1—Allocations

20 USC 2711.

"SEC. 1005. BASIC GRANTS.

"(a) Amount of Grants.—

"(1) Grants for territories.—There is authorized to be appropriated for each fiscal year for the purpose of this paragraph 1 percent of the amount appropriated for such year for payments to States under this section. The amount appropriated pursuant to this paragraph shall be allotted by the Secretary (A) among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for grants under this part, and (B) to the Secretary of the Interior in the amount necessary (i) to make payments pursuant to paragraph (1) of subsection (d), and (ii) to make payments pursuant to paragraph (2) of subsection (d). The grant which a local educational agency in Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands is eligible to receive shall be determined pursuant to such criteria as the Secretary determines will best carry out the purposes of this chapter. Appropriation authorization.

"(2) Grants for local educational agencies and Puerto Rico.—

"(A) In any case in which the Secretary determines that satisfactory data for that purpose are available, the grant which a local educational agency in a State is eligible to receive under this subpart for a fiscal year shall (except as provided in paragraph (3)), be determined by multiplying the number of children counted under subsection (c) by 40 percent of the amount determined under the next sentence. The amount determined under this sentence shall be the average per pupil expenditure in the State except that (i) if the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, such amount shall be 80 percent of the average per pupil expenditure in the United States, or (ii) if the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, such amount shall be 120 percent of the average per pupil expenditure in the United States.

"(B) In any case in which such data are not available, subject to paragraph (3), the grant for any local educational agency in a State shall be determined on the basis of the aggregate amount of such grants for all such agencies in the county or counties in which the school district of the particular agency is located, which aggregate amount shall be equal to the aggregate amount determined under subparagraph (A) for such county or counties, and shall be allocated among those agencies upon such equitable basis as may be determined by the State educational agency in accordance with the basic criteria prescribed by the Secretary.

"(C) For each fiscal year, the Secretary shall determine the percentage which the average per pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per pupil expenditure of any of the 50 States. The grant which the Commonwealth of Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of children counted under subsection (c) for the Commonwealth of Puerto Rico by the product of—

"(i) the percentage determined under the preceding sentence; and

"(ii) 32 percent of the average per pupil expenditure in the United States.

"(3) SPECIAL ALLOCATION PROCEDURES.—

"(A) Upon determination by the State educational agency that a local educational agency in the State is unable or unwilling to provide for the special educational needs of children described in clause (C) of paragraph (1) of subsection (c), who are living in institutions for neglected or delinquent children, the State educational agency shall, if it assumes responsibility for the special educational needs of such children, be eligible to receive the portion of the allocation to such local educational agency which is attributable to such neglected or delinquent children, but if the State educational agency does not assume such responsibility, any other State or local public agency, as determined by regulations established by the Secretary, which does assume such responsibility, shall be eligible to receive such portion of the allocation.

"(B) In the case of local educational agencies which serve in whole or in part the same geographical area, and in the case of a local educational agency which provides free public education for a substantial number of children who reside in the school district of another local educational agency, the State educational agency may allocate the amount of the grants for those agencies among them in such manner as it determines will best carry out the purposes of this chapter.

"(C) In any State in which a large number of local educational agencies overlap county boundaries, the State educational agency may apply to the Secretary for authority during any particular fiscal year to make the allocations under this part (other than section 1006) directly to local educational agencies without regard to the counties or may continue to make such allocations if the agency had the authority to do so under chapter 1 of the Education Consolidation and Improvement Act of 1981. If the Secretary approves an application of a State educational agency for a particular year under this subparagraph, the State educational agency shall provide assurances that such allocations will be made using precisely the same factors for determining a grant as are used under this part and that a procedure will be established through which local educational agencies dissatisfied with the determinations made by the State educational agency may appeal directly to the Secretary for a final determination.

"(4) DEFINITION.—For purposes of this subsection, the term 'State' does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"(b) MINIMUM NUMBER OF CHILDREN TO QUALIFY.—A local educational agency shall be eligible for a basic grant for a fiscal year under this subpart only if it meets the following requirements with respect to the number of children counted under subsection (c):

"(1) In any case (except as provided in paragraph (3)) in which the Secretary determines that satisfactory data for the purpose of this subsection as to the number of such children are available on a school district basis, the number of such children in the school district of such local educational agency shall be at least 10.

"(2) In any other case, except as provided in paragraph (3), the number of such children in the county which includes such local educational agency's school district shall be at least 10.

"(3) In any case in which a county includes a part of the school district of the local educational agency concerned and the Secretary has not determined that satisfactory data for the purpose of this subsection are available on a school district basis for all the local educational agencies or all the counties into which the school district of the local educational agency concerned extends, the eligibility requirement with respect to the number of such children for such local educational agency shall be determined in accordance with regulations prescribed by the Secretary for the purposes of this subsection.

"(c) CHILDREN TO BE COUNTED.—

Disadvantaged persons.

"(1) CATEGORIES OF CHILDREN.—The number of children to be counted for purposes of this section is the aggregate of—

"(A) the number of children aged 5 to 17, inclusive, in the school district of the local educational agency from families below the poverty level as determined under paragraph (2)(A),

"(B) the number of children aged 5 to 17, inclusive, in the school district of such agency from families above the poverty level as determined under paragraph (2)(B), and

"(C) the number of children aged 5 to 17, inclusive, in the school district of such agency living in institutions for neglected or delinquent children (other than such institutions operated by the United States) but not counted pursuant to subpart 3 of part D for the purposes of a grant to a State agency, or being supported in foster homes with public funds.

"(2) DETERMINATION OF NUMBER OF CHILDREN.—

"(A) For the purposes of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families below the poverty level on the basis of the most recent satisfactory data available from the Department of Commerce for local educational agencies (or, if such data are not available for such agencies, for counties); and in determining the families which are below the poverty level, the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census.

"(B) For purposes of this section, the Secretary shall determine the number of children aged 5 to 17, inclusive, from families above the poverty level on the basis of the number of such children from families receiving an annual income, in excess of the current criteria of poverty, from payments under the program of aid to families with dependent children under a State plan approved under title IV of the Social Security Act; and in making such determinations the Secretary shall utilize the criteria of poverty used by the Bureau of the Census in compiling the most recent decennial census for a family of 4 in such form as those criteria have been updated by increases in the Consumer Price Index. The Secretary shall determine the number of such children and the number of children of such ages living in institutions for neglected or delinquent children, or being supported in foster homes with public funds, on the basis of the caseload data for the month of October of the preceding fiscal year (using, in the case of children described in the preceding sentence, the criteria of poverty and the form of such criteria required by such sentence which were determined for the calendar year preceding such month of October) or, to the extent that such data are not available to the Secretary before January of the calendar year in which the Secretary's determination is made, then on the basis of the most recent reliable data available to the Secretary at the time of such determination. The Secretary of Health and Human Services shall collect and transmit the information required by this subparagraph to the Secretary not later than January 1 of each year.

"(C) When requested by the Secretary, the Secretary of Commerce shall make a special estimate of the number of children of such ages who are from families below the poverty level (as determined under subparagraph (A) of this paragraph) in each county or school district, and the Secretary is authorized to pay (either in advance or by way of reimbursement) the Secretary of Commerce the cost of making this special estimate. The Secretary of Commerce shall give consideration to any request of the chief executive of a State for the collection of additional census information. For purposes of this section, the Secretary shall consider all children who are in correctional institutions to be living in institutions for delinquent children.

"(d) PROGRAM FOR INDIAN CHILDREN.—

"(1) From the amount allotted for payments to the Secretary of the Interior under the second sentence of subsection (a)(1), the Secretary of the Interior shall make payments to local educational agencies, upon such terms as the Secretary determines will best carry out the purposes of this chapter with respect to out-of-State Indian children in the elementary and secondary schools of such agencies under special contracts with the Department of the Interior. The amount of such payment may not exceed, for each such child, 40 percent of (A) the average per pupil expenditure in the State in which the agency is located, or (B) 120 percent of such expenditure in the United States, whichever is the greater.

"(2) The amount allotted for payments to the Secretary of the Interior under the second sentence of subsection (a)(1) for any fiscal year shall be, as determined pursuant to criteria established by the Secretary, the amount necessary to meet the special educational needs of educationally deprived Indian children on reservations serviced by elementary and secondary schools for Indian children operated with Federal assistance or operated by the Department of the Interior. Such payment shall be made pursuant to an agreement between the Secretary and the Secretary of the Interior containing such assurances and terms as the Secretary determines will best achieve the purposes of this chapter. Such agreement shall contain (A) an assurance that payments made pursuant to this subparagraph will be used solely for programs and projects approved by the Secretary of the Interior which meet the applicable requirements of subpart 2 of this part and that the Department of the Interior will comply in all other respects with the requirements of this chapter, and (B) provision for carrying out the applicable provisions of subpart 2 of this part and part F. Such agreement shall consider a tribal organization operating a school under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) or the Tribally Controlled Schools Act of 1987 as a local educational agency, and shall consider the Secretary of the Interior as a State or State educational agency for all purposes defining the authority of States or State educational agencies relative to local educational agencies. If, in the capacity as a State educational agency, the Secretary of the Interior promulgates regulations applicable to such tribal organizations, the Secretary shall comply with section 1451 of this Act and with section 553 of title 5 of the United States Code, relating to administrative procedure, and such regulations must be consistent with subsections (d) and (e) of section 1121, section 1130, and section 1133 of the Education Amendments of 1978.

Contracts

"(e) State Minimum.—(1) For any fiscal year for which—

"(A) sums available for the purposes of this section exceed sums available under chapter 1 of the Education Consolidation and Improvement Act of 1981 for fiscal year 1988; and

"(B)(i) sums available for the purpose of section 1006 equal or exceed $400,000,000, or

"(ii) sums available for the purpose of section 1005 equal or exceed amounts appropriated for such purpose in fiscal year 1988 by $700,000,000,

the aggregate amount allotted for all local educational agencies within a State may not be less than one-quarter of 1 percent of the total amount available for such fiscal year under this section.

"(2) The provisions of paragraph (1) shall apply only if each State is allotted an amount which is not less than the payment made to each State under chapter 1 of the Education Consolidation and Improvement Act of 1981 for fiscal year 1988.

"(3)(A) No State shall, by reason of the application of the provisions of paragraph (1) of this subsection, be allotted more than—

"(i) 150 percent of the amount that the State received in the fiscal year preceding the fiscal year for which the determination is made, or

"(ii) the amount calculated under subparagraph (B),

whichever is less.

"(B) For the purpose of subparagraph (A)(ii), the amount for each State equals—

"(i) the number of children in such State counted under subsection (c) in the fiscal year specified in subparagraph (A), multiplied by

"(ii) 150 percent of the national average per pupil payment made with funds available under this section for that year.

Effective date
Termination date

"(g) DURATION OF ASSISTANCE.—During the period beginning October 1, 1988, and ending September 30, 1993, the Secretary shall, in accordance with the provisions of this part, make payments to State educational agencies for grants made on the basis of entitlements created under this section.

Disadvantaged persons
20 USC 2712

"SEC. 1006. GRANTS FOR LOCAL EDUCATIONAL AGENCIES IN COUNTIES WITH ESPECIALLY HIGH CONCENTRATIONS OF CHILDREN FROM LOW-INCOME FAMILIES.

"(a) ELIGIBILITY FOR AND AMOUNT OF SPECIAL GRANTS.—

"(1)(A) Except as otherwise provided in this paragraph, each county, in a State other than Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, which is eligible for a grant under this chapter for any fiscal year shall be entitled to an additional grant under this section for that fiscal year if—

"(i) the number of children counted under section 1005(c) of this chapter in the school district of local educational agencies in such county for the preceding fiscal year exceeds 6,500, or

"(ii) the number of children counted under section 1005(c) exceeds 15 percent of the total number of children aged five to seventeen, inclusive, in the school districts of local educational agencies in such county in that fiscal year.

"(B) Except as provided in subparagraph (C), no State described in subparagraph (A) shall receive less than—

"(i) one-quarter of 1 percent of the sums appropriated under subsection (c) of this section for such fiscal year; or

"(ii) $250,000,

whichever is higher.

"(C) No State shall, by reason of the application of the provisions of subparagraph (B)(i) of this paragraph, be allotted more than—

"(i) 150 percent of the amount that the State received in the fiscal year preceding the fiscal year for which the determination is made, or

"(ii) the amount calculated under subparagraph (B),

whichever is less.

"(D) For the purpose of subparagraph (C), the amount for each State equals—

"(i) the number of children in such State counted for purposes of this section in the fiscal year specified in subparagraph (B),

multiplied by

"(ii) 150 percent of the national average per pupil payment made with funds available under this section for that year.

"(2) For each county in which there are local educational agencies eligible to receive an additional grant under this section for any fiscal year the Secretary shall determine the product of—

"(A) the greater of—

"(i) the number of children in excess of 6,500 counted under section 1005(c) for the preceding fiscal year, in the school districts of local educational agencies of a county which qualifies on the basis of subparagraph (A) of paragraph (1); or

"(ii) the number of children counted under section 1005(c) for the preceding fiscal year in the school districts of local educational agencies in a county which qualifies on the basis of subparagraph (B) of paragraph (1); and

"(B) the quotient resulting from the division of the amount determined for those agencies under section 1005(a)(2) of this chapter for the fiscal year for which the determination is being made divided by the total number of children counted under section 1005(c) for that agency for the preceding fiscal year.

"(3) The amount of the additional grant to which an eligible county is entitled under this section for any fiscal year shall be an amount which bears the same ratio to the amount reserved under subsection (c) for that fiscal year as the product determined under paragraph (2) for such county for that fiscal year bears to the sum of such products for all counties in the United States for that fiscal year.

"(4) For the purposes of this section, the Secretary shall determine the number of children counted under section 1005(c) for any county, and the total number of children aged five to seventeen, inclusive, in school districts of local educational agencies in such county, on the basis of the most recent satisfactory data available at the time the payment for such county is determined under section 1005.

"(5)(A) Pursuant to regulations established by the Secretary and except as provided in subparagraphs (B) and (C) and paragraph (6), funds allocated to counties under this part shall be allocated by the State educational agency only to those local educational agencies whose school districts lie (in whole or in part) within the county and which are determined by the State educational agency to meet the eligibility criteria of clauses (i) and (ii) of paragraph (1)(A). Such determination shall be made on the basis of the available poverty data which such State educational agency determines best reflect the current distribution in the local educational agency of low-income families consistent with the purposes of this chapter. The amount of funds under this part that each qualifying local educational agency receives shall be proportionate to the number or percentage of children from low-income families in the school districts of the local educational agency.

"(B) In counties where no local educational agency meets the criteria of clause (i) or (ii) of paragraph (1)(A), the State educational agency shall allocate such funds among the local educational agencies within such counties (in whole or in part) in rank order of their respective concentration and numbers of children from low-income families and in amounts which are consistent with the degree of concentration of poverty. Only local educational agencies with concentrations of poverty that exceed the county wide average of poverty shall receive any funds pursuant to the provisions of this subparagraph.

"(C) In States which receive the minimum grant amount under paragraph (1), the State educational agency shall allocate such funds among the local educational agencies in such State by either of the following methods:

"(i) in accordance with the provisions of subparagraphs (A) and (B) of this paragraph; or

"(ii) without regard to the counties in which such local educational agencies are located, in rank order of their respective concentration and numbers of children from low-income families and in amounts which are consistent with the degree of concentration of poverty, except that only those local educational agencies with concentrations of poverty that exceed the Statewide average of poverty shall receive any funds pursuant to the provisions of this clause.

"(6) A State may reserve not more than 2 percent of its allocation under this section for the purpose of making direct payments to local educational agencies that meet the criteria of clauses (i) and (ii) of paragraph (1)(A), but are otherwise ineligible.

"(b) PAYMENTS; USE OF FUNDS.—

"(1) The total amount which counties in a State are entitled to under this section for any fiscal year shall be added to the amount paid to that State under section 1401 for such year. From the amount paid to it under this section, the State shall distribute to local educational agencies in each county of the State the amount (if any) to which it is entitled under this section.

"(2) The amount paid to a local educational agency under this section shall be used by that agency for activities undertaken pursuant to its application submitted under section 1012 and shall be subject to the other requirements in subpart 2 of this part.

"(c) RESERVATION OF FUNDS.—

"(1) For any fiscal year for which amounts appropriated for part A of this chapter exceed $3,900,000,000, the amounts specified in paragraph (2) of this subsection shall be available to carry out this section.

"(2)(A) The first $400,000,000 in excess of $3,900,000,000 appropriated for part A of this chapter in any fiscal year shall be available to carry out this section.

"(B) Whenever the amounts appropriated for part A exceed $4,300,000,000 in any fiscal year, 10 percent of the amount appropriated for that fiscal year shall be available to carry out this section, except that no State shall, as a result of implementation of paragraph (2) of this subsection, receive less under section 1005 than it received for the previous fiscal year under such section or under section 554(a)(1)(A) of the Education Consolidation and Improvement Act of 1981.

"(d) RATABLE REDUCTION RULE.—If the sums available under subsection (c) for any fiscal year for making payments under this section are not sufficient to pay in full the total amounts which all States are entitled to receive under subsection (a) for such fiscal year, the maximum amounts which all States are entitled to receive under subsection (a) for such fiscal year shall be ratably reduced. In case additional funds become available for making such payments for any fiscal year during which the preceding sentence is applicable, such reduced amounts shall be increased on the same basis as they were reduced.

"Subpart 2—Basic Program Requirements

"SEC. 1011. USES OF FUNDS. 20 USC 2721.

"(a) PROGRAM DESCRIPTION.—

"(1) A local educational agency may use funds received under this part only for programs and projects which are designed to meet the special educational needs of educationally deprived children identified in accordance with section 1014 and which are included in an application for assistance approved by the State educational agency.

"(2) Such programs and projects under paragraph (1) may include preschool through secondary programs; the acquisition of equipment and instructional materials; books and school library resources; employment of special instructional personnel, school counselors, and other pupil services personnel; employment and training of education aides; payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas; the training of teachers, librarians, other instructional and pupil services personnel, and, as appropriate, early childhood education professionals (including training in preparation for the implementation of programs and projects in a subsequent school year); the construction, where necessary, of school facilities; parental involvement activities under section 1016; planning for and evaluation of such programs and projects assisted under this chapter; and other expenditures authorized under this chapter.

"(3) State and local educational agencies are encouraged to develop programs to assist eligible children to improve their achievement in basic skills and more advanced skills and to consider year-round services and activities, including intensive summer school programs.

"(b) INNOVATION PROJECTS.—Subject to the approval of the State educational agency, a local educational agency may use not more than 5 percent of payments under this part for the costs of conducting innovative projects developed by the local educational agency that include only—

"(1) the continuation of services to children eligible for services in any preceding year for a period sufficient to maintain progress made during their eligibility;

"(2) the provision of continued services to eligible children transferred to ineligible areas or schools as part of a desegregation plan for a period not to exceed 2 years;

"(3) incentive payments to schools that have demonstrated significant progress and success in attaining the goals of this chapter;

"(4) training of chapter 1 and nonchapter 1 paid teachers and librarians with respect to the special educational needs of eligible children and integration of activities under this part into regular classroom programs;

"(5) programs to encourage innovative approaches to parental involvement or rewards to or expansion of exemplary parental involvement programs;

"(6) encouraging the involvement of community and private sector resources (including fiscal resources) in meeting the needs of eligible children; and

"(7) assistance by local educational agencies of schools identified under section 1021(b).

20 USC 2722.

"SEC. 1012. ASSURANCES AND APPLICATIONS.

"(a) STATE EDUCATIONAL AGENCY ASSURANCES.—Any State desiring to participate under this chapter shall submit to the Secretary, through its State educational agency, assurances that the State educational agency—

"(1) will meet the requirements in section 435(b)(2) and (b)(5) of the General Education Provisions Act relating to fiscal control and fund accounting procedures;

"(2) will carry out the activities required under this chapter with regard to evaluation and school program improvement;

"(3) has on file a program improvement plan that meets the requirements of section 1020; and

"(4) will ensure that its local educational agencies and State agencies receiving funds under this chapter comply with all applicable statutory and regulatory provisions pertaining to this chapter.

Such assurances shall remain in effect for the duration of participation under this chapter.

Grants.

"(b) LOCAL APPLICATIONS.—A local educational agency may receive a grant under this chapter for any fiscal year if it has on file with the State educational agency an application which describes the procedure to be used under section 1014(b) to assess students' needs and establish program goals, describes the programs and projects to be conducted with such assistance for a period of not more than 3 years, and describes the desired outcomes for eligible children, in terms of basic and more advanced skills that all children are expected to master, which will be used as the basis for evaluating the program or project as required by section 1019, and such application has been approved by the State educational agency and developed in consultation with teachers and parents.

"(c) LOCAL ASSURANCES.—Such application shall provide assurance that the programs and projects described—

"(1) are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served, are designed and implemented in consultation with teachers (including early childhood education professionals and librarians when appropriate), and provide for parental involvement in accordance with section 1016;

"(2) make provision for services to educationally deprived children attending private elementary and secondary schools in accordance with section 1017;

"(3) allocate time and resources for frequent and regular coordination of the curriculum under this chapter with the regular instructional program; and

Handicapped persons.

"(4) in the case of participating students who are also limited English proficient or are handicapped, provide maximum coordination between services provided under this chapter and services provided to address children's handicapping conditions or limited English proficiency, in order to increase program effectiveness, eliminate duplication, and reduce fragmentation of the students' programs.

"SEC. 1013. ELIGIBLE SCHOOLS.

Disadvantaged persons.
20 USC 2723.

"(a) General Provisions.—

"(1) Subject to subsection (b), a local educational agency shall use funds received under this chapter in school attendance areas having high concentrations of children from low-income families (hereinafter referred to as 'eligible school attendance areas'), and where funds under this chapter are insufficient to provide programs and projects for all educationally deprived children in eligible school attendance areas, a local educational agency shall annually rank its eligible school attendance areas from highest to lowest within each grade span grouping or for the entire local educational agency, according to relative degree of concentration of children from low-income families. A local educational agency may carry out a program or project assisted under this chapter in an eligible school attendance area only if it also carries out such program or project in all other eligible school attendance areas which are ranked higher under the first sentence of this paragraph.

"(2) The same measure of low income, which shall be chosen by the local educational agency on the basis of the best available data and which may be a composite of several indicators, shall be used with respect to all school attendance areas within a grade span grouping or for the entire local educational agency, both to identify the areas having high concentrations of children from low-income families and to determine the ranking of each area.

"(3) The requirements of this subsection shall not apply in the case of a local educational agency with a total enrollment of less than 1,000 children, but this paragraph does not relieve such an agency from the responsibility to serve eligible children according to the provisions of section 1014.

"(b) Local Educational Agency Discretion.—Notwithstanding subsection (a)(1) of this section, a local educational agency shall have discretion to identify and rank eligible attendance areas as follows:

"(1) A local educational agency may designate as eligible and serve all of its attendance areas within a grade span grouping or in the entire local educational agency if the percentage of children from low-income families in each attendance area of the agency is within 5 percentage points of the average percentage of such children within a grade span grouping or for the entire local educational agency.

"(2) A local educational agency may designate any school attendance area in which at least 25 percent of the children are from low-income families as an eligible school attendance area if the aggregate amount expended under this chapter and under a State program meeting the requirements of section 1018(d)(1)(B) in that fiscal year in each school attendance area of that agency eligible under subsection (a) in which projects assisted under this chapter were carried out in the preceding fiscal year equals or exceeds the amount expended from those sources in that area in such preceding fiscal year if such attendance areas qualify for such amounts under subsection (c)(1).

"(3) A local educational agency may, with the approval of the State educational agency, designate as eligible and serve school attendance areas with substantially higher numbers or percentages of educationally deprived children before school attendance areas with higher concentrations of children from low-income families, but this paragraph shall not permit the provision of services to more school attendance areas than could otherwise be served. A State educational agency shall approve such a proposal only if the State educational agency finds that the proposal will not substantially impair the delivery of deprived children from low-income families in project areas served by the local educational agency.

"(4) Funds received under this part may be used for educationally deprived children who are in a school which is not located in an eligible school attendance area when the proportion of children from low-income families in average daily attendance in such school is substantially equal to the proportion of such children in an eligible school attendance area of such agency.

"(5) If an eligible school attendance area or eligible school was so designated and served in accordance with subsection (a) in the immediately preceding fiscal year, it may continue to be so designated for the subsequent fiscal year even though it does not qualify as eligible under such subsection in such additional year.

"(6) With the approval of the State educational agency, eligible school attendance areas or eligible schools which have higher proportions or numbers of children from low-income families may be skipped if they are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this part, except that (A) the number of children attending private elementary and secondary schools who receive services under this part shall be determined without regard to non-Federal compensatory education funds which serve eligible children in public elementary and secondary schools, and (B) children attending private elementary and secondary schools who receive assistance under this part shall be identified in accordance with this section and without regard to skipping public school attendance areas or schools under this paragraph.

"(c) ALLOCATIONS.—

"(1) Except as provided in paragraph (2), a local educational agency shall allocate funds under this part among project areas or schools on the basis of the number and needs of children to be served as determined in accordance with section 1014.

"(2) Children in eligible schools, who receive services under this part and subsequently become ineligible due to improved academic achievement attributable to such services, may continue to be considered eligible for 2 additional years only for the purpose of determining the allocation of funds among eligible schools under paragraph (1). Any funds so allocated shall be used to provide services to any children determined to be eligible under section 1014.

"SEC. 1014. ELIGIBLE CHILDREN.

Disadvantaged persons.
20 USC 2724.

"(a) General Provisions.—

"(1) Except as provided in subsections (c) and (d) of this section and section 1015, a local educational agency shall use funds received under this part for educationally deprived children, identified in accordance with subsection (b) as having the greatest need for special assistance, in school attendance areas or schools satisfying the requirements of section 1013.

"(2) The eligible population for services under this part are—

"(A) those children up to age 21 who are entitled to a free public education through grade 12, and

"(B) those children who are not yet at a grade level where the local educational agency provides a free public education, yet are of an age at which they can benefit from an organized instructional program provided in a school or other educational setting.

"(b) Assessment of Educational Need.—A local educational agency may receive funds under this part only if it makes an assessment of educational needs each year to (1) identify educationally deprived children in all eligible attendance areas; (2) identify the general instructional areas on which the program will focus; (3) select those educationally deprived children who have the greatest need for special assistance, as identified on the basis of educationally related objective criteria established by the local educational agency, which include written or oral testing instruments, that are uniformly applied to particular grade levels throughout the local educational agency; and (4) determine the special educational needs (and library resource needs) of participating children with specificity sufficient to ensure concentration on such needs.

"(c) Local Educational Agency Discretion.—(1) Educationally deprived children who begin participation in a program or project assisted under this part, in accordance with subsections (a) and (b) but who, in the same school year, are transferred to a school attendance area or school not receiving funds under this part, may, if the local agency so determines, continue to participate in a program or project funded under this part for the duration of that same school year.

"(2) In providing services under this part a local educational agency may skip educationally deprived children in greatest need of assistance who are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this part.

"(3) A child who, in the previous year, was identified as being in greatest need of assistance, and who continues to be educationally deprived, but who is no longer identified as being in greatest need of assistance, may participate in a program or project assisted under this part while continuing to be educationally deprived for a maximum of 2 additional years.

"(d) Special Rules.—(1) Children receiving services to overcome a handicapping condition or limited English proficiency shall also be eligible to receive services under this part, if they have needs stemming from educational deprivation and not related solely to the handicapping condition or limited English proficiency. Such children shall be selected on the same basis as other children identified as eligible for and selected to receive services under this part. Funds under this part may not be used to provide services that are otherwise required by law to be made available to such children.

"(2) A student who at any time in the previous 2 years was receiving services under subpart 3 of part D of this chapter or under subpart 3 of part B of title I of the Elementary and Secondary Education Act (as amended by chapter 1 of the Education Consolidation and Improvement Act of 1981) shall be considered eligible for services under this part, and may be served subject to the provisions of subsections (a) and (b).

Disadvantaged persons
20 USC 2725.

"SEC. 1015. SCHOOLWIDE PROJECTS.

"(a) USE OF FUNDS FOR SCHOOLWIDE PROJECTS.—In the case of any school serving an attendance area that is eligible to receive services under this part and in which, for the first year of the 3-year period of projects assisted under this section, not less than 75 percent of the children are from low-income families or any eligible school in which not less than 75 percent of the children enrolled in the school are from low-income families, the local educational agency may carry out a project under this part to upgrade the entire educational program in that school if the requirements of subsections (b), (c), (d), and (e) are met.

"(b) DESIGNATION OF SCHOOLS.—A school may be designated for a schoolwide project under subsection (a) if—

"(1) a plan has been developed for that school by the local educational agency and has been approved by the State educational agency which—

"(A) provides for a comprehensive assessment of educational needs of all students in the school, in particular the special needs of educationally deprived children;

"(B) establishes goals to meet the special needs of all students and to ensure that educationally deprived children are served effectively and demonstrate performance gains comparable to other students;

"(C) describes the instructional program, pupil services, and procedures to be used to implement those goals;

"(D) describes the specific uses of funds under this part as part of that program; and

"(E) describes how the school will move to implement an effective schools program as defined in section 1471, if appropriate;

"(2) the plan has been developed with the involvement of those individuals who will be engaged in carrying out the plan, including parents, teachers, librarians, education aides, pupil services personnel, and administrators (and secondary students if the plan relates to a secondary school);

"(3) the plan provides for consultation among individuals described in paragraph (2) as to the educational progress of all students and the participation of such individuals in the development and implementation of the accountability measures required by subsection (e);

"(4) appropriate training is provided to parents of children to be served, teachers, librarians, and other instructional, administrative, and pupil services personnel to enable them effectively to carry out the plan;

"(5) the plan includes procedures for measuring progress, as required by subsection (e), and describes the particular measures to be used; and

"(6)(A) in the case of a school district in which there are one or more schools described in subsection (a) and there are also one or more other schools serving project areas, the local educational agency makes the Federal funds provided under this part available for children in such schools described in subsection (a) in amounts which, per educationally deprived child served, equal or exceed the amount of such funds made available per educationally deprived child served in such other schools; and

"(B) the average per pupil expenditure in schools described in subsection (a) (excluding amounts expended under a State compensatory education program) for the fiscal year in which the plan is to be carried out will not be less than such expenditure in such schools in the previous fiscal year, except that the cost of services for programs described in section 1018(d)(2)(A) shall be included for each fiscal year as appropriate only in proportion to the number of children in the building served in such programs in the year for which this determination is made.

"(c) Approval of Plan; Operation of Project.—

"(1) The State educational agency shall approve the plan of any local educational agency for a schoolwide project if that plan meets the requirements of subsection (b).

"(2) For any school which has such a plan approved, the local educational agency—

"(A) shall, in order to carry out the plan, be relieved of any requirements under this part with respect to the commingling of funds provided under this chapter with funds available for regular programs;

"(B) shall use funds received under this part only to supplement, and to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the school approved for a schoolwide project under paragraph (1);

"(C) shall comply with the provisions of section 1018(c); and

"(D) may not be required to identify particular children as being eligible to participate in projects assisted under this part but shall identify educationally deprived children for purposes of subsections (b) and (e) of this section.

"(d) Use of Funds.—In addition to uses under section 1011, funds may be used in schoolwide projects for—

"(1) planning and implementing effective schools programs, and

"(2) other activities to improve the instructional program and pupil services in the school, such as reducing class size, training staff and parents of children to be served, and implementing extended schoolday programs.

"(e) Accountability.—

"(1) The State educational agency may grant authority for a local educational agency to operate a schoolwide project for a period of 3 years. If a school meets the accountability requirements in paragraphs (2) and (3) at the end of such period, as determined by the State educational agency, that school will be allowed to continue the schoolwide project for an additional 3-year period.

"(2)(A) Except as provided in subparagraph (B), after 3 years, a school must be able to demonstrate (i) that the achievement level of educationally deprived children as measured according to the means specified in the plan required by subsection (b) exceeds the average achievement of participating children districtwide, or (ii) that the achievement of educationally deprived children in that school exceeds the average achievement of such children in that school in the 3 fiscal years prior to initiation of the schoolwide project.

"(B) For a secondary school, demonstration of lower dropout rates, increased retention rates, or increased graduation rates is acceptable in lieu of increased achievement, if achievement levels over the 3-year schoolwide project period, compared with the 3-year period immediately preceding the schoolwide project, do not decline.

Public information

"(3) Schools shall annually collect achievement and other assessment data for the purposes of paragraph (2). The results of achievement and other assessments shall be made available annually to parents, the public, and the State educational agency.

20 USC 2726

"SEC. 1016. PARENTAL INVOLVEMENT.

"(a) FINDINGS; GENERAL REQUIREMENT.—

"(1) Congress finds that activities by schools to increase parental involvement are a vital part of programs under this chapter.

"(2) Toward that end, a local educational agency may receive funds under this chapter only if it implements programs, activities, and procedures for the involvement of parents in programs assisted under this chapter. Such activities and procedures shall be planned and implemented with meaningful consultation with parents of participating children and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward achieving the goals under subsection (b).

"(3) For purposes of this section, parental involvement includes, but is not limited to, parent input into the design and implementation of programs under this chapter, volunteer or paid participation by parents in school activities, and programs, training, and materials which build parents' capacity to improve their children's learning in the home and in school.

"(b) GOALS OF PARENTAL INVOLVEMENT.—In carrying out the requirements of subsection (a), a local educational agency shall, in coordination with parents of participating children, develop programs, activities, and procedures which have the following goals—

"(1) to inform parents of participating children of the program under this chapter, the reasons for their children's participation in such programs, and the specific instructional objectives and methods of the program;

"(2) to support the efforts of parents, including training parents, to the maximum extent practicable, to work with their children in the home to attain the instructional objectives of programs under this chapter and to understand the program requirements of this chapter and to train parents and teachers to build a partnership between home and school;

"(3) to train teachers and other staff involved in programs under this chapter to work effectively with the parents of participating students;

"(4) to consult with parents, on an ongoing basis, concerning the manner in which the school and parents can better work together to achieve the program's objectives and to give parents a feeling of partnership in the education of their children;

"(5) to provide a comprehensive range of opportunities for parents to become informed, in a timely way, about how the program will be designed, operated, and evaluated, allowing opportunities for parental participation, so that parents and educators can work together to achieve the program's objectives; and

"(6) to ensure opportunities, to the extent practicable, for the full participation of parents who lack literacy skills or whose native language is not English.

"(c) MECHANISMS FOR PARENTAL INVOLVEMENT.—

"(1) Each local educational agency, after consultation with and review by parents, shall develop written policies to ensure that parents are involved in the planning, design, and implementation of programs and shall provide such reasonable support for parental involvement activities as parents may request. Such policies shall be made available to parents of participating children.

"(2) Each local educational agency shall convene an annual meeting to which all parents of participating children shall be invited, to explain to parents the programs and activities provided with funds under this chapter. Such meetings may be districtwide or at the building level, as long as all such parents are given an opportunity to participate.

Reports.

"(3) Each local educational agency shall provide parents of participating children with reports on the children's progress, and, to the extent practical, hold a parent-teacher conference with the parents of each child served in the program, to discuss that child's progress, placement, and methods by which parents can complement the child's instruction. Educational personnel under this chapter shall be readily accessible to parents and shall permit parents to observe activities under this chapter.

"(4) Each local educational agency shall (A) provide opportunities for regular meetings of parents to formulate parental input into the program, if parents of participating children so desire; (B) provide parents of participating children with timely information about the program; and (C) make parents aware of parental involvement requirements and other relevant provisions of programs under this chapter.

"(5) Parent programs, activities, and procedures may include regular parent conferences; parent resource centers; parent training programs and reasonable and necessary expenditures associated with the attendance of parents at training sessions; hiring, training, and utilization of parental involvement liaison workers; reporting to parents on the children's progress; training and support of personnel to work with parents, to coordinate parent activities, and to make contact in the home; use of parents as classroom volunteers, tutors, and aides; provision of school-to-home complementary curriculum and materials and assistance in implementing home-based education activities that reinforce classroom instruction and student motivation; provision of timely information on programs under this chapter (such as program plans and evaluations); soliciting parents' suggestions in the planning, development, and operation of the program; providing timely responses to parent recommendations; parent advisory councils; and other activities designed to enlist the support and participation of parents to aid in the instruction of their children.

"(6) Parents of participating children are expected to cooperate with the local educational agency by becoming knowledgeable of the program goals and activities and by working to reinforce their children's training at home.

"(d) COORDINATION WITH ADULT EDUCATION ACT.—Programs of parental involvement shall coordinate, to the extent possible, with programs funded under the Adult Education Act.

"(e) ACCESSIBILITY REQUIREMENT.—Information, programs, and activities for parents pursuant to this section shall be provided, to the extent practicable, in a language and form which the parents understand.

Disadvantaged persons.
20 USC 2727.

"SEC. 1017. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS.

"(a) GENERAL REQUIREMENTS.—To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall, after timely and meaningful consultation with appropriate private school officials, make provisions for including special educational services and arrangements (such as dual enrollment, educational radio and television, computer equipment and materials, other technology, and mobile educational services and equipment) in which such children can participate and which meet the requirements of sections 1011(a), 1012(b)(1), 1013, 1014, and 1018(b). Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the local educational agency.

"(b) BYPASS PROVISION.—

"(1) If a local educational agency is prohibited by law from providing for the participation in special programs for educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Secretary shall waive such requirements, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a).

"(2) If the Secretary determines that a local educational agency has substantially failed to provide for the participation on an equitable basis of educationally deprived children enrolled in private elementary and secondary schools as required by subsection (a), the Secretary shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a), upon which determination the provisions of subsection (a) shall be waived.

"(3)(A) The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other concerned organizations or individuals concerning violations of this section. The Secretary shall investigate and resolve each such complaint within 120 days after receipt of the complaint.

"(B) When the Secretary arranges for services pursuant to this subsection, the Secretary shall, after consultation with the appropriate public and private school officials, pay to the provider the cost of such services, including the administrative cost of arranging for such services, from the appropriate allocation or allocations under this chapter.

"(C) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State or local educational agency the amount the Secretary estimates would be necessary to pay the cost of such services.

"(D) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the local educational agency to meet the requirements of subsection (a).

"(4)(A) The Secretary shall not take any final action under this subsection until the State educational agency and local educational agency affected by such action have had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or a designee to show cause why such action should not be taken.

"(B) If a State or local educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

"(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

"(c) PRIOR DETERMINATION.—Any bypass determination by the Secretary under title I of the Elementary and Secondary Education Act of 1965, as in effect prior to July 1, 1988, or chapter 1 of the Education Consolidation and Improvement Act of 1981 shall remain in effect to the extent consistent with the purposes of this chapter.

"(d) CAPITAL EXPENSES.—

"(1) A local educational agency may apply to the State educational agency for payments for capital expenses consistent with the provisions of this subsection. State educational agencies shall distribute funds to local educational agencies based on the degree of need as set forth in the application. Such an application shall contain information on such capital expenses by fiscal year and shall contain an assurance that any funds received pursuant to this subsection shall be used solely for purposes of the program authorized by this chapter.

"(2)(A) From the amount appropriated for the purposes of this subsection for any fiscal year, the amount which each State shall be eligible to receive shall be an amount which bears the same ratio to the amount appropriated as the number of children enrolled in private schools who were served under chapter 1 of the Education Consolidation and Improvement Act of 1981 in the State during the period July 1, 1984 through June 30, 1985, bears to the total number of such children served during such period in all States.

"(B) Amounts which are not used by a State for the purposes of this subsection shall be reallocated by the Secretary among other States on the basis of need.

Appropriation authorization. "(3) There is authorized to be appropriated $30,000,000 for fiscal year 1988, $40,000,000 for the fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993. Any sums appropriated under this provision shall be used for increases in capital expenses paid from funds under chapter 1 of the Education Consolidation and Improvement Act or this section subsequent to July 1, 1985, of local educational agencies in providing the instructional services required under section 557 of the Education Consolidation and Improvement Act and this section, when without such funds, services to private schoolchildren would have been or have been reduced or would be reduced or adversely affected.

"(4) For the purposes of this subsection, the term 'capital expenses' is limited to expenditures for noninstructional goods and services such as the purchase, lease and renovation of real and personal property (including but not limited to mobile educational units and leasing of neutral sites or space), insurance and maintenance costs, transportation, and other comparable goods and services.

20 USC 2728

"SEC. 1018. FISCAL REQUIREMENTS.

"(a) MAINTENANCE OF EFFORT.—

"(1) Except as provided in paragraph (2), a local educational agency may receive funds under this chapter for any fiscal year only if the State educational agency finds that either the combined fiscal effort per student or the aggregate expenditures of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 percent of such combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

"(2) The State educational agency shall reduce the amount of the allocation of funds under this chapter in any fiscal year in the exact proportion to which a local educational agency fails to meet the requirement of paragraph (1) by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to such local agency), and no such lesser amount shall be used for computing the effort required under paragraph (1) for subsequent years.

"(3) Each State educational agency may waive, for 1 fiscal year only, the requirements of this subsection if the State educational agency determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency.

"(b) Federal Funds To Supplement, Not Supplant Regular Non-Federal Funds.—A State educational agency or other State agency in operating its State level programs or a local educational agency may use funds received under this chapter only so as to supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this chapter and in no case may such funds be so used as to supplant such funds from such non-Federal sources. In order to demonstrate compliance with this subsection, no State educational agency, other State agency, or local educational agency shall be required to provide services under this chapter through use of a particular instructional method or in a particular instructional setting.

"(c) Comparability of Services.—

"(1) A local educational agency may receive funds under this chapter only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this chapter. Where all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are substantially comparable in each project area.

"(2)(A) A local educational agency shall be considered to have met the requirements of paragraph (1) if it has filed with the State educational agency a written assurance that it has established and implemented—

"(i) a districtwide salary schedule;

"(ii) a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

"(iii) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

"(B) Unpredictable changes in student enrollment or personnel assignments which occur after the beginning of a school year shall not be included as a factor in determining comparability of services.

"(3) Each educational agency shall develop procedures for compliance with the provisions of this subsection, and shall annually maintain records documenting compliance. Each State educational agency shall monitor the compliance of local educational agencies within the States with respect to the requirements of this subsection. Records.

"(4) Each local educational agency with not more than 1 building for each grade span shall not be subject to the provisions of this subsection.

"(5) Each local educational agency which is found to be out of compliance with this subsection shall be subject to withholding or repayment of funds only to the amount or percentage by which the local educational agency has failed to comply.

Disadvantaged persons.

"(d) EXCLUSION OF SPECIAL STATE AND LOCAL PROGRAM FUNDS.—

"(1)(A) For the purposes of determining compliance with the requirements of subsections (b) and (c), a local educational agency or a State agency operating a program under part D of this chapter may exclude State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children including compensatory education for educationally deprived children after prior determination pursuant to paragraphs (3) and (4) of this subsection that such programs meet the requirements of subparagraph (B).

"(B) A State or local program meets the requirements of this subparagraph if it is similar to programs assisted under this part. The Secretary shall consider a State or local program to be similar to programs assisted under this part if—

"(i) all children participating in the program are educationally deprived,

"(ii) the program is based on similar performance objectives related to educational achievement and is evaluated in a manner consistent with those performance objectives,

"(iii) the program provides supplementary services designed to meet the special educational needs of the children who are participating,

Records.

"(iv) the local educational agency keeps such records and affords such access thereto as are necessary to assure the correctness and verification of the requirements of this subparagraph, and

"(v) the State educational agency monitors performance under the program to assure that the requirements of this subparagraph are met.

"(2)(A) For the purpose of determining compliance with the requirements of subsection (c), a local educational agency may exclude State and local funds expended for—

Minorities.

"(i) bilingual education for children of limited English proficiency,

Handicapped persons.

"(ii) special education for handicapped children, and

"(iii) certain State phase-in programs as described in subparagraph (B).

"(B) A State education program which is being phased into full operation meets the requirements of this subparagraph if the Secretary is satisfied that—

"(i) the program is authorized and governed specifically by the provisions of State law;

"(ii) the purpose of the program is to provide for the comprehensive and systematic restructuring of the total educational environment at the level of the individual school;

"(iii) the program is based on objectives, including but not limited to, performance objectives related to educational achievement and is evaluated in a manner consistent with those objectives;

"(iv) parents and school staff are involved in comprehensive planning, implementation, and evaluation of the program;

"(v) the program will benefit all children in a particular school or grade-span within a school;

"(vi) schools participating in a program describe, in a school level plan, program strategies for meeting the special educational needs of educationally deprived children;

"(vii) at all times during such phase-in period at least 50 percent of the schools participating in the program are the schools serving project areas which have the greatest number or concentrations of educationally deprived children or children from low-income families;

"(viii) State funds made available for the phase-in program will supplement, and not supplant, State and local funds which would, in the absence of the phase-in program, have been provided for schools participating in such program;

"(ix) the local educational agency is separately accountable, for purposes of compliance with the clauses of this subparagraph, to the State educational agency for any funds expended for such program; and

"(x) the local educational agencies carrying out the program are complying with the clauses of this subparagraph and the State educational agency is complying with applicable provisions of this paragraph.

"(3) The Secretary shall make an advance determination of whether or not a State program meets the requirements of this subsection. The Secretary shall require each State educational agency to submit the provisions of State law together with implementing rules, regulations, orders, guidelines, and interpretations which are necessary for an advance determination. The Secretary's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent State law affecting the program, the State educational agency shall submit such changes to the Secretary.

"(4) The State educational agency shall make an advance determination of whether or not a local program meets the requirements of this subsection. The State educational agency shall require each local educational agency to submit the provisions of local law, together with implementing rules, regulations, guidelines, and interpretations which are necessary to make such an advance determination. The State educational agency's determination shall be in writing and shall include the reasons for the determination. Whenever there is any material change in pertinent local law affecting the program, the local educational agency shall submit such changes to the State educational agency.

"SEC. 1019. EVALUATIONS.

20 USC 2729.

"(a) LOCAL EVALUATION.—Each local educational agency shall—

"(1) evaluate the effectiveness of programs assisted under this part, in accordance with national standards developed according to section 1435, at least once every 3 years (using objective measurement of individual student achievement in basic skills and more advanced skills, aggregated for the local educational agency as a whole) as an indicator of the impact of the program;

"(2) submit such evaluation results to the State educational agency at least once during each 3-year application cycle;

"(3) determine whether improved performance under paragraph (1) is sustained over a period of more than one program year.

"(b) State Evaluations.—In accordance with national standards, each State educational agency shall—

Public information

"(1) conduct an evaluation (based on local evaluation data collected under subsection (a) and sections 1107(b), 1202(a)(6), and 1242(d)) of the programs assisted under this chapter at least every 2 years, submit that evaluation to the Secretary and make public the results of that evaluation;

"(2) inform local educational agencies, in advance, of the specific evaluation data that will be needed and how it may be collected; and

Handicapped persons

"(3) collect data on the race, age, gender, and number of children with handicapping conditions served by the programs assisted under this chapter and on the number of children served by grade-level under the programs assisted under this chapter and annually submit such data to the Secretary.

"(c) Special Condition.—Projects funded under this part that serve only preschool, kindergarten, or first grade students or students in such grade levels who are included in projects serving children above such grade levels shall not be subject to the requirements of subsection (a).

20 USC 2730

"SEC. 1020. STATE EDUCATIONAL PROGRAM IMPROVEMENT PLAN.

"(a) Plan Requirements.—A State educational agency which receives funds under part A, part C, and part E of this chapter shall develop, in consultation with a committee of practitioners constituted pursuant to section 1451(b) of this chapter, a plan to ensure implementation of the provisions of this section and section 1021. Each such plan shall contain, but shall not be limited to—

"(1) the objective measures and standards the State educational agency and other agencies receiving funds under part A, part C, and part E of this chapter will use to assess aggregate performance pursuant to section 1021, and may include implementation of section 1019;

"(2) the means the State educational agency will use to develop joint plans with local educational agencies which have identified, pursuant to section 1021(b), schools in need of program improvement to attain satisfactory student progress, the timetable for developing and implementing such plans (within parameters defined pursuant to section 1431) and the program improvement assistance that will be provided to such schools pursuant to section 1021. Such program improvement assistance may include, but shall not be limited to, training and retraining of personnel, development of curricula that has shown promise in similar schools, replication of promising practices in effective schools models, improving coordination between programs assisted under this chapter and the regular school program, and the development of innovative strategies to enhance parental involvement.

"(b) Dissemination and Availability of Plan.—(1) The State educational agency shall disseminate the plan developed under this subsection to all local educational agencies and other State agencies receiving funds under this chapter.

"(2) The State educational program improvement plan shall be available at the State educational agency for inspection by the retary and may be amended by the State educational agency er consultation with a committee of practitioners when cessary.

"(c) AVAILABILITY OF FUNDS.—In any fiscal year for which appro- iations are made pursuant to section 1405, the State educational ency shall fully implement the program improvement activities scribed in sections 1020 and 1021. In any fiscal year for which ppropriations are not made, the State educational agency shall onduct, at a minimum, the activities required under section 1021(d), nd other program improvement activities to the extent practicable.

SEC. 1021. PROGRAM IMPROVEMENT. 20 USC 2731.

"(a) LOCAL REVIEW.—Each local educational agency shall—

"(1) conduct an annual review of the program's effectiveness in improving student performance for which purpose the local educational agency shall use outcomes developed pursuant to section 1012 and subsection (b) of this section, and make the results of such review available to teachers, parents of participating children, and other appropriate parties;

"(2) determine whether improved performance under paragraph (1) is sustained over a period of more than one program year;

"(3) use the results of such review and of evaluation pursuant to section 1019 in program improvement efforts required by section 1021(b); and

"(4) annually assess through consultation with parents, the effectiveness of the parental involvement program and determine what action needs to be taken, if any, to increase parental participation.

"(b) SCHOOL PROGRAM IMPROVEMENT.—(1) With respect to each school which does not show substantial progress toward meeting the desired outcomes described in the local educational agency's application under section 1012(a) or shows no improvement or a decline in aggregate performance of children served under this chapter for one school year as assessed by measures developed pursuant to section 1019(a) or subsection (a), pursuant to the program improvement timetable developed under sections 1020 and 1431, the local educational agency shall—

"(A) develop and implement in coordination with such school a plan for program improvement which shall describe how such agency will identify and modify programs funded under this chapter for schools and children pursuant to this section and which shall incorporate those program changes which have the greatest likelihood of improving the performance of educationally disadvantaged children, including—

"(i) a description of educational strategies designed to achieve the stated program outcomes or to otherwise improve the performance and meet the needs of eligible children; and

"(ii) a description of the resources, and how such resources will be applied, to carry out the strategies selected, including, as appropriate, qualified personnel, inservice training, curriculum materials, equipment, and physical facilities; and, where appropriate—

"(I) technical assistance;

"(II) alternative curriculum that has shown promise in similar schools;

"(III) improving coordination between part A and part C of this chapter and the regular school program;

"(IV) evaluation of parent involvement;

"(V) appropriate inservice training for staff paid with funds under this chapter and other staff who teach children served under this chapter; and

"(VI) other measures selected by the local educational agency; and

"(B) submit the plan to the local school board and the State educational agency, and make it available to parents of children served under this chapter in that school.

"(2) A school which has 10 or fewer students served during an entire program year shall not be subject to the requirements of this subsection.

"(c) Discretionary Assistance.—The local educational agency may apply to the State educational agency for program improvement assistance funds authorized under section 1405.

"(d) State Assistance to Local Educational Agencies.—(1) If after the locally developed program improvement plan shall have been in effect according to the timetable established under sections 1020 and 1431, the aggregate performance of children served under this chapter in a school does not meet the standards stated in subsections (a) and (b), the local educational agency shall, with the State educational agency, and in consultation with school staff and parents of participating children, develop and implement a joint plan for program improvement in that school until improved performance is sustained over a period of more than 1 year.

"(2) The State educational agency shall ensure that program improvement assistance is provided to each school identified under paragraph (1).

"(e) Local Conditions.—The local educational agency and the State educational agency, in performing their responsibilities under this section, shall take into consideration—

"(1) the mobility of the student population,

"(2) the extent of educational deprivation among program participants which may negatively affect improvement efforts,

"(3) the difficulties involved in dealing with older children in secondary school programs funded under this chapter,

"(4) whether indicators other than improved achievement demonstrate the positive effects on participating children of the activities funded under this chapter, and

"(5) whether a change in the review cycle pursuant to section 1019 or 1021(a)(1) or in the measurement instrument used or other measure-related phenomena has rendered results invalid or unreliable for that particular year.

"(f) Student Program Improvement.—On the basis of the evaluations and reviews under sections 1019(a)(1) and 1021(a)(1), each local educational agency shall—

"(1) identify students who have been served for a program year and have not met the standards stated in subsections (a) and (b),

"(2) consider modifications in the program offered to better serve students so identified, and

"(3) conduct a thorough assessment of the educational needs of students who remain in the program after 2 consecutive years of participation and have not met the standards stated in subsection (a).

"(g) Program Improvement Assistance.—In carrying out the ogram improvement and student improvement activities required subsections (a), (b), (c), and (d), local educational agencies and tate educational agencies shall utilize the resources of the regional chnical assistance centers and appropriate regional rural assistnce programs established by section 1456 to the full extent such esources are available.

"(h) Further Action.—If the State educational agency finds that, consistent with the program improvement timetable established under sections 1020 and 1431, after one year under the joint plan developed pursuant to subsection (d), including services in accordance with section 1017, a school which continues to fall below the standards for improvement stated in subsections (a) and (b) with regard to the aggregate performance of children served under part A, part C, and part E of this chapter, the State educational agency shall, with the local educational agency, review the joint plan and make revisions which are designed to improve performance, and continue to do so each consecutive year until such performance is sustained over a period of more than one year. Nothing in this section or section 1020 shall be construed to give the State any authority concerning the educational program of a local educational agency that does not otherwise exist under State law.

"(i) Mutual Agreement.—Before any joint plan may be implemented under subsection (d) and subsection (h) both the local educational agency and State educational agency must approve such plan.

"PART B—EVEN START PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

"SEC. 1051. STATEMENT OF PURPOSE.

20 USC 2741.

"It is the purpose of this part to improve the educational opportunities of the Nation's children and adults by integrating early childhood education and adult education for parents into a unified program to be referred to as 'Even Start'. The program shall be implemented through cooperative projects that build on existing community resources to create a new range of services.

"SEC. 1052. PROGRAM AUTHORIZATION.

20 USC 2742.

"(a) Grants by the Secretary.—In any fiscal year in which the appropriations for this part do not equal or exceed $50,000,000, the Secretary is authorized, in accordance with the provisions of this part which are not inconsistent with the provisions of this subsection, to make grants to local educational agencies or consortia of such agencies to carry out Even Start programs.

"(b) State Grant Program.—In any fiscal year in which the appropriations for this part equal or exceed $50,000,000, the Secretary is authorized, in accordance with the provisions of this part, to make grants to States from allocations under section 1053 to enable States to carry out Even Start programs.

"(c) Definition.—For the purpose of this part, the term 'State' includes each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

"SEC. 1053. ALLOCATION.

20 USC 2743.

"(a) Reservation for Migrant Programs.—The Secretary shall first reserve an amount equal to 3 percent of such amount for programs consistent with the purpose of this part for migrant children. Programs for which funds are reserved under this subsection shall be conducted through the Office of Migrant Education.

"(b) STATE ALLOCATION.—Except as provided in section 1052(a) and subsection (c) of this section, each State shall be eligible to receive a grant under this part in each fiscal year that bears the same ratio to the remainder of the amount appropriated under section 1052(b) in that fiscal year as the amount allocated under section 1005 of this Act to the local educational agencies in the State bears to the total amount allocated to such agencies in all States.

"(c) STATE MINIMUM.—(1) Subject to the provisions of paragraph (2), no State shall receive less than the greater of—

"(A) one-half of one percent of the amount appropriated for this part and allocated under subsection (b) for any fiscal year; or

"(B) $250,000.

"(2)(A) No State shall, by reason of the application of the provisions of paragraph (1)(A) of this subsection, be allotted more than—

"(i) 150 percent of the amount that the State received in the fiscal year preceding the fiscal year for which the determination is made, or

"(ii) the amount calculated under subparagraph (B),

whichever is less.

"(B) For the purpose of subparagraph (A)(ii), the amount for each State equals—

"(i) the number of children in such State counted for purposes of this part in the fiscal year specified in subparagraph (A), multiplied by

"(ii) 150 percent of the national average per pupil payment made with funds available under this part for that year.

20 USC 2744

"SEC. 1054. USES OF FUNDS.

"(a) IN GENERAL.—In carrying out the program under this part, funds made available to local educational agencies, in collaboration with, where appropriate, institutions of higher education, community-based organizations, the appropriate State educational agency, or other appropriate nonprofit organizations, shall be used to pay the Federal share of the cost of providing family-centered education programs which involve parents and children in a cooperative effort to help parents become full partners in the education of their children and to assist children in reaching their full potential as learners.

"(b) PROGRAM ELEMENTS.—Each program assisted under this part shall include—

"(1) the identification and recruitment of eligible children;

"(2) screening and preparation of parents and children for participation, including testing, referral to necessary counseling, and related services;

"(3) design of programs and provision of support services (when unavailable from other sources) appropriate to the participants' work and other responsibilities, including—

"(A) scheduling and location of services to allow joint participation by parents and children;

"(B) child care for the period that parents are involved in the program provided for under this part; and

"(C) transportation for the purpose of enabling parents and their children to participate in the program authorized by this part;

"(4) the establishment of instructional programs that promote adult literacy, training parents to support the educational growth of their children, and preparation of children for success in regular school programs;

"(5) provision of special training to enable staff to develop the skills necessary to work with parents and young children in the full range of instructional services offered through this part (including child care staff in programs enrolling children of participants under this part on a space available basis);

"(6) provision of and monitoring of integrated instructional services to participating parents and children through home-based programs; and

"(7) coordination of programs assisted under this part with programs assisted under this chapter and any relevant programs under chapter 2 of this title, the Adult Education Act, the Education of the Handicapped Act, the Job Training Partnership Act, and with the Head Start program, volunteer literacy programs, and other relevant programs.

"(c) Federal Share Limitation.—The Federal share under this part may be—

"(1) not more than 90 percent of the total cost of the program in the first year the local educational agency receives assistance under this part,

"(2) 80 percent in the second such year,

"(3) 70 percent in the third such year, and

"(4) 60 percent in the fourth and any subsequent such year.

Funds may not be used for indirect costs. The remaining cost may be obtained from any source other than funds made available for programs under this title.

"SEC. 1055. ELIGIBLE PARTICIPANTS.

20 USC 2745.

"Eligible participants shall be—

"(1) a parent or parents who are eligible for participation in an adult basic education program under the Adult Education Act; and

"(2) the child or children (aged 1 to 7, inclusive), of any individual under paragraph (1), who reside in a school attendance area designated for participation in programs under part A.

"SEC. 1056. APPLICATIONS.

20 USC 2746.

Grants.

"(a) Submission.—To be eligible to receive a grant under this part a local educational agency shall submit an application to the Secretary under section 1052(a) and to the State educational agency under section 1052(b) in such form and containing or accompanied by such information as the Secretary or the State educational agency, as the case may be, may require.

"(b) Required Documentation.—Such application shall include documentation that the local educational agency has the qualified personnel required—

"(1) to develop, administer, and implement the program required by this part, and

"(2) to provide special training necessary to prepare staff for the program.

"(c) PLAN.—Such application shall also include a plan of operation for the program which includes—

"(1) a description of the program goals;

"(2) a description of the activities and services which will be provided under the program (including training and preparation of staff);

"(3) a description of the population to be served and an estimate of the number of participants;

"(4) if appropriate, a description of the collaborative efforts of the institutions of higher education, community-based organizations, the appropriate State educational agency, private elementary schools, or other appropriate nonprofit organizations in carrying out the program for which assistance is sought;

"(5) a statement of the methods which will be used—

"(A) to ensure that the programs will serve those eligible participants most in need of the activities and services provided by this part;

Disadvantaged persons. Handicapped persons.

"(B) to provide services under this part to special populations, such as individuals with limited English proficiency and individuals with handicaps; and

"(C) to encourage participants to remain in the programs for a time sufficient to meet program goals; and

"(6) a description of the methods by which the applicant will coordinate programs under this part with programs under chapter 1 and chapter 2, where appropriate, of this title, the Adult Education Act, the Job Training Partnership Act, and with Head Start programs, volunteer literacy programs, and other relevant programs.

20 USC 2747.

"SEC. 1057. AWARD OF GRANTS.

"(a) SELECTION PROCESS.—The Secretary or each State educational agency, as the case may be, shall appoint a review panel that will award grants on the basis of proposals which—

"(1) are most likely to be successful in meeting the goals of this part;

"(2) serve the greatest percentage of eligible children and parents as described in section 1055;

"(3) demonstrate the greatest degree of cooperation and coordination between a variety of relevant service providers in all phases of the program;

"(4) submit budgets which appear reasonable, given the scope of the proposal;

"(5) demonstrate the local educational agency's ability to provide additional funding under section 1054(c);

"(6) are representative of urban and rural regions of the State or of the United States, as the case may be; and

"(7) show the greatest promise for providing models which may be transferred to other local educational agencies.

"(b) REVIEW PANEL.—A review panel shall, to the extent practicable, consist of 7 members as follows:

"(1) an early childhood education professional;

"(2) an adult education professional;

"(3) a representative of parent-child education organizations;

"(4) a representative of community-based literacy organizations;

"(5) a member of a local board of education;

"(6) a representative of business and industry with a commitment to education; and

"(7) an individual involved in the implementation of programs under this chapter within the State.

he panel shall contain members described in paragraphs (1), (2), (6), nd (7).

Urban areas.
Rural areas.

"(c) EQUITABLE DISTRIBUTION OF ASSISTANCE.—In approving grants nder this part under section 1052(a), the Secretary shall assure an quitable distribution of assistance among the States, among urban and rural areas of the United States, and among urban and rural areas of a State.

"(d) DURATION.—(1) Grants may be awarded for a period not to exceed 4 years. In any application from a local educational agency for a grant to continue a project for the second, third, or fourth fiscal year following the first fiscal year in which a grant was awarded to uch local educational agency, the Secretary or the State eduational agency, as the case may be, shall review the progress being made toward meeting the objectives of the project. The Secretary or he State educational agency, as the case may be, may refuse to award a grant if the Secretary or such agency finds that sufficient progress has not been made toward meeting such objectives, but only after affording the applicant notice and an opportunity for a hearing.

"(2) The Secretary shall establish criteria for carrying out the provisions of paragraph (1) in the transition fiscal year whenever the provisions of section 1052(b) apply to authorized State grant programs.

20 USC 2748.

"SEC. 1058. EVALUATION.

"(a) INDEPENDENT ANNUAL EVALUATION.—The Secretary shall provide for the annual independent evaluation of programs under this part to determine their effectiveness in providing—

"(1) services to special populations;

"(2) adult education services;

"(3) parent training;

"(4) home-based programs involving parents and children,

"(5) coordination with related programs; and

"(6) training of related personnel in appropriate skill areas.

"(b) CRITERIA.—

"(1) Each evaluation shall be conducted by individuals not directly involved in the administration of the program or project operated under this part. Such independent evaluators and the program administrators shall jointly develop evaluation criteria which provide for appropriate analysis of the factors under subsection (a). When possible, each evaluation shall include comparisons with appropriate control groups.

"(2) In order to determine a program's effectiveness in achieving its stated goals, each evaluation shall contain objective measures of such goals and, whenever feasible, shall obtain the specific views of program participants about such programs.

"(c) REPORT TO CONGRESS AND DISSEMINATION.—The Secretary shall prepare and submit to the Congress a review and summary of the results of such evaluations not later than September 30, 1993. The annual evaluations shall be submitted to the National Diffusion Network for consideration for possible dissemination.

20 USC 2749

"SEC. 1059. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated for the purposes of this part $50,000,000 for the fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993.

"PART C—SECONDARY SCHOOL PROGRAMS FOR BASIC SKILLS IMPROVEMENT AND DROPOUT PREVENTION AND REENTRY

Disadvantaged persons
20 USC 2761.

"SEC. 1101. PURPOSE.

"It is the purpose of this subpart to provide additional assistance to local educational agencies with high concentrations of low-income children, low-achieving children, or school dropouts to improve the achievement of educationally disadvantaged children enrolled in secondary schools of such agencies, and to reduce the number of youths who do not complete their elementary and secondary education.

20 USC 2762.

"SEC. 1102. ALLOCATION.

"(a) RESERVATION FOR MIGRANT PROGRAMS.—From the amount appropriated under section 1108 for the fiscal years 1990, 1991, 1992, and 1993, the Secretary shall first reserve an amount equal to 3 percent of such amount for programs consistent with the purpose of this part for school dropout prevention and reentry programs and secondary school basic skills improvement programs for migrant children. Programs for which funds are reserved under this subsection shall be conducted through the Office of Migrant Education.

Grants

"(b) STATE ALLOCATION.—Except as provided in subsection (c), each State shall be eligible to receive a grant under this part in each fiscal year that bears the same ratio to the remainder of the amount appropriated in that fiscal year as the amount allocated under section 1005 of this Act to the local educational agencies in the State bears to the total amount allocated to such agencies in all States.

"(c) STATE MINIMUM.—(1) No State shall receive less than the greater of—

"(A) one-quarter of 1 percent of the amount appropriated for this part and allocated under subsection (b) for any fiscal year; or

"(B) $250,000.

"(2)(A) No State shall, by reason of the application of the provisions of paragraph (1)(A) of this subsection, be allotted more than—

"(i) 150 percent of the amount that the State received in the fiscal year preceding the fiscal year for which the determination is made, or

"(ii) the amount calculated under subparagraph (B),

whichever is less.

"(B) For the purpose of subparagraph (A)(ii), the amount for each State equals—

"(i) the number of children in such State counted for purposes of this part in the fiscal year specified in subparagraph (A), multiplied by

"(ii) 150 percent of the national average per pupil payment made with funds available under this part for that year.

"(d) LOCAL EDUCATIONAL AGENCY ALLOCATION.—Each State educational agency shall allocate funds among local educational agencies in the State on the basis of—

"(1) the eligibility of such agency for funds under section 1005 of this Act; and

"(2) the criteria described in section 1105.

Each local educational agency may carry out the activities described in section 1103 in cooperation with community-based organizations.

"(e) State Administration.—A State may reserve not more than 5 percent of the amounts available under this part for any fiscal year for State administrative costs.

"SEC. 1103. USES OF FUNDS. 20 USC 2763.

"(a) General Rule.—A local educational agency may use—

"(1) the remainder of such funds for secondary schools basic skills improvement activities pursuant to subsection (b), and

"(2) not to exceed 50 percent of funds paid under this part in any fiscal year for dropout prevention and reentry activities pursuant to subsection (c).

"(b) Basic Skills for Secondary Schools.—Funds made available under this subpart may be used—

"(1) to initiate or expand programs designed to meet the special educational needs of secondary school students and to help such students attain grade level proficiency in basic skills, and, as appropriate, learn more advanced skills;

"(2) to develop innovative approaches for—

"(A) surmounting barriers that make secondary school programs under this subpart difficult for certain students to attend and difficult for secondary schools to administer, such as scheduling problems; and

"(B) courses leading to successful completion of the general education development test or of graduation requirements;

"(3) to develop and implement innovative programs involving community-based organizations or the private sector, or both, to provide motivational activities, preemployment training, or transition-to-work activities;

"(4) to provide programs for eligible students outside the school, with the goal of reaching school dropouts who will not reenter the traditional school, for the purpose of providing compensatory education, basic skills education, or courses for general educational development;

"(5) to use the resources of the community to assist in providing services to the target population;

"(6) to provide training for staff who will work with the target population on strategies and techniques for identifying, instructing, and assisting such students;

"(7) to provide guidance and counseling activities, support services, exploration of postsecondary educational opportunities, youth employment activities, and other student services which are necessary to assist eligible students; and

"(8) to recruit, train, and supervise secondary school students (including the provision of stipends to students in greatest need of financial assistance) to serve as tutors of other students eligible for services under this subpart and under part A, in order to assist such eligible students with homework assignments, provide instructional activities, and foster good study habits and improved achievement.

"(c) USES OF FUNDS FOR SCHOOL DROPOUT PREVENTION AND REENTRY PROJECTS.—Funds made available under this subsection may be used for—

"(1) effective programs which identify potential student dropouts and prevent them from dropping out of elementary and secondary school;

"(2) effective programs which identify and encourage children who have already dropped out to reenter school and complete their elementary and secondary education;

"(3) effective programs for early intervention designed to identify at-risk students in elementary and early secondary schools;

"(4) model systems for collecting and reporting information to local school officials on the number, ages, and grade levels of the children not completing their elementary and secondary education and the reasons why such children have dropped out of school;

"(5) school dropout programs which include coordinated services and activities with programs of vocational education, adult basic education, and programs under the Job Training Partnership Act;

"(6) projects which are carried out in consortia with a community-based organization, any nonprofit private organization, institution of higher education, State educational agency, State and local public agencies, private industry councils (established under the Job Training Partnership Act), museum, library, or educational television or broadcasting station, or community-based organization; or

"(7) any of the activities described in section 6005 or 6006 of title VI.

"(d) LIMITATION.—Not more than 25 percent of amounts available may be used by a local educational agency for noninstructional services.

20 USC 2764

"SEC. 1104. APPLICATIONS.

"(a) APPLICATION REQUIRED.—Any local educational agency which desires to receive a grant under this part shall submit to the State educational agency an application which describes the program to be supported with funds under this part and complies with the provisions of subsection (b).

"(b) CONTENTS OF APPLICATION.—Each application submitted under subsection (a) shall—

"(1) describe the program goals and the manner in which funds will be used to initiate or expand services to secondary school students, school dropouts, and potential school dropouts;

"(2) describe the activities and services which will be provided by the program (including documentation to demonstrate that the local educational agency has the qualified personnel required to develop, administer, and implement the program under this part);

"(3) assure that the programs will be conducted in schools with the greatest need for assistance, in terms of achievement levels, poverty rates, or school dropout rates;

"(4) assure that the programs will serve those eligible students most in need of the activities and services provided by this part;

Disadvantaged persons.
Handicapped persons.

"(5) assure that services will be provided under this part, as appropriate, to special populations, such as individuals with limited English proficiency and individuals with handicaps;

"(6) assure that parents of eligible students will be involved in the development and implementation of programs under this part;

"(7) describe the methods by which the applicant will coordinate programs under this part with programs for the eligible student population operated by community-based organizations, social service organizations and agencies, private sector entities, and other agencies, organizations, and institutions, and with programs conducted under the Carl D. Perkins Vocational Education Act, the Adult Education Act, the Job Training Partnership Act, and other relevant Acts;

"(8) assure that, if feasible, the local educational agency will enter into arrangements with local businesses, labor organizations, or chambers of commerce under which such businesses and organizations will help secure employment for graduates of schools operating projects under this part;

"(9) assure that to the extent consistent with the number of students in the school district of the local educational agency who are enrolled in private secondary schools, such agency shall, after timely and meaningful consultation with appropriate private school officials, make provision for including such services and arrangements for the benefit of such students as will assure their equitable participation in the purposes and benefits of this part; and

"(10) provide such other information as the State educational agency may require to determine the nature and quality of the proposed project and the applicant's ability to carry it out.

"(c) Special Rule.—If the Secretary determines that a local educational agency has substantially failed to comply with paragraph (9) (by reason of State law or otherwise) or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirement, and, subject to the provisions of section 1017(b) of part A of this chapter, shall arrange for the provision of services to such students.

"(d) Duration of Grants.—Grants may be awarded for a period of 3 years.

20 USC 2765.

"SEC. 1105. AWARD OF GRANTS.

"Each State educational agency shall award grants to local educational agencies within the State which—

Disadvantaged persons.

"(1) demonstrate the greatest need for services provided under this part based on their numbers of low-income children, numbers of low-achieving children, or numbers of school dropouts;

Urban areas.
Rural areas.

"(2) are representative of urban and rural regions of the State;

"(3) offer innovative approaches to improving achievement among eligible youth or offer approaches which show promise for replication and dissemination; and

"(4) offer innovative approaches to reducing the number of school dropouts.

20 USC 2766.

"SEC. 1106. FISCAL REQUIREMENTS AND COORDINATION PROVISIONS.

"(a) GENERAL RULE.—(1) The provisions of subsections (a) through (d) of section 1018 of this Act shall apply to the program authorized by this part.

"(2) ADMINISTRATIVE COSTS.—Not more than 5 percent of a grant may be used for local administrative costs.

"(3) COORDINATION AND DISSEMINATION.—Local educational agencies receiving grants under this part shall cooperate with the coordination and dissemination efforts of the National Diffusion Network and State educational agencies.

"(b) SPECIAL RULE.—(1) Each local educational agency shall use funds under this part to supplement the level of funds under this chapter that are used for secondary school programs.

"(2) In order to comply with paragraph (1), any local educational agency which operates secondary school programs funded under chapter 1 of the Education Consolidation and Improvement Act of 1981 or part A of this Act and which is operating secondary school basic skills programs under this part shall continue the same aggregate level of funding for such programs, at the same schools or at other eligible schools within the local educational agency.

20 USC 2767.

"SEC. 1107. EVALUATION.

"The provisions of sections 1019 and 1021 shall apply to local educational agencies receiving grants under this part.

20 USC 2768.

"SEC. 1108. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated $400,000,000 for the fiscal year 1990, $450,000,000 for the fiscal year 1991, $500,000,000 for the fiscal year 1992, and $550,000,000 for the fiscal year 1993 to carry out this part.

"PART D—PROGRAMS OPERATED BY STATE AGENCIES

"Subpart 1—Programs for Migratory Children

20 USC 2761.

"SEC. 1201. GRANTS—ENTITLEMENT AND AMOUNT.

"(a) ENTITLEMENT.—A State educational agency or a combination of such agencies shall, upon application, be entitled to receive a grant for any fiscal year under this part to establish or improve, either directly or through local educational agencies, programs of education for migratory children of migratory agricultural workers (including migratory agricultural dairy workers) or of migratory fishermen which meet the requirements of section 1202.

"(b) AMOUNT OF GRANT.—(1) Except as provided in section 1291, the total grants which shall be made available for use in any State (other than the Commonwealth of Puerto Rico) for this subpart shall be an amount equal to 40 percent of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, of 80 percent of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, of 120 percent of the average per pupil expenditure in the United States) multiplied by (i) the estimated number of such migratory children aged 3 to 21, inclusive, who reside in the State full time, and (ii) the full-time equivalent of the estimated number of such migratory children aged 3 to 21, inclusive, who reside in the State part time, as determined by the Secretary in accordance with regulations, except that if, in the case of any State, such amount exceeds the amount required under section 1202, the Secretary shall allocate such excess, to the extent necessary, to other States, whose total of grants under this sentence would otherwise be insufficient for all such children to be served in such other States. In determining the full-time equivalent number of migratory children who are in a State during the summer months, the Secretary shall adjust the number so determined to take into account the special needs of those children for summer programs and the additional costs of operating such programs during the summer. In determining the number of migrant children for the purposes of this section the Secretary shall use statistics made available by the migrant student record transfer system or such other system as the Secretary may determine most accurately and fully reflects the actual number of migrant students. In submitting the information required to make such determination, the States may not exceed a standard error rate of 5 percent.

"(2) To carry out the determinations of eligibility required by this section, the Secretary shall develop a national standard form for certification of migrant students.

Puerto Rico.

"(3) For each fiscal year, the Secretary shall determine the percentage which the average per pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per pupil expenditure of any of the 50 States. The grant which the Commonwealth of Puerto Rico shall be eligible to receive under this section for a fiscal year shall be the amount arrived at by multiplying the number of such migrant children in the Commonwealth of Puerto Rico by the product of—

"(A) the percentage determined under the preceding sentence, and

"(B) 32 percent of the average per pupil expenditure in the United States.

"SEC. 1202. PROGRAM REQUIREMENTS.

20 USC 2782.

"(a) REQUIREMENTS FOR APPROVAL OF APPLICATION.—The Secretary may approve an application submitted under section 1201(a) only upon a determination—

Records.

"(1) that payments will be used for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of migratory children of migratory agricultural workers (including migratory agricultural dairy workers) or of migratory fishermen, and to coordinate such programs and projects with similar programs and projects in other States, including the transmittal of pertinent information with respect to school records of such children;

"(2) that in planning and carrying out programs and projects there has been and will be appropriate coordination with programs administered under section 418 of the Higher Education Act, section 402 of the Job Training Partnership Act, the Education of the Handicapped Act, the Community Services Block Grant Act, the Head Start program, the migrant health program, and all other appropriate programs under the Departments of Education, Labor, and Agriculture;

"(3) that such programs and projects will be administered and carried out in a manner consistent with the basic objectives of section 1011 (other than subsection (b)), sections 1012, 1014, and 1018, and subpart 2 of part F;

"(4) that, in the planning and operation of programs and projects at both the State and local educational agency level, there is appropriate consultation with parent advisory councils (established in order to comply with this provision) for programs extending for the duration of a school year, and that all programs are carried out in a manner consistent with the requirements of section 1016;

"(5) that, in planning and carrying out programs and projects, there has been adequate assurance that provision will be made for the preschool education needs of migratory children of migratory agricultural workers (including migratory agricultural dairy workers) or of migratory fishermen; and

"(6) that programs conducted under this subpart will be evaluated in terms of their effectiveness in achieving stated goals, including objective measurements of educational achievement in basic skills, and that for formerly migratory children who have been served under this subpart in a full school year program for at least 2 years, such evaluations shall include a determination of whether improved performance is sustained for more than 1 year.

"(b) CONTINUATION OF MIGRANT STATUS.—For purposes of this subpart, with the concurrence of the parents, a migratory child of a migratory agricultural worker (including migratory agricultural dairy workers) or of a migratory fisherman shall be considered to continue to be such a child for a period, not in excess of 5 years. Such children who are currently migrant, as determined pursuant to regulations of the Secretary, shall be given priority in the consideration of programs and activities contained in applications submitted under this section.

"(c) DEFINITIONS.—The Secretary shall continue to use the definitions of 'agricultural activity', 'currently migratory child', and 'fishing activity' which were published in the Federal Register on April 30, 1985, in regulations prescribed under section 555(b) of the Education Consolidation and Improvement Act of 1981 and subpart 1 of part B of title I of the Elementary and Secondary Education Act of 1965 (as in effect on April 30, 1985). No additional definition of 'migratory agricultural worker' or 'migratory fisherman' may be applied to the provisions of this subpart.

"(d) BYPASS PROVISION.—If the Secretary determines that a State is unable or unwilling to conduct educational programs for migratory children of migratory agricultural workers (including migratory agricultural dairy workers) or of migratory fishermen, that it would result in more efficient and economic administration, or that it would add substantially to the welfare or educational attainment of such children, the Secretary may make special arrangements with other public or nonprofit private agencies to carry out the purposes of this section in 1 or more States, and for this purpose the Secretary may use all or part of the total of grants available for any such State under this subpart.

20 USC 2783

"SEC. 1203. COORDINATION OF MIGRANT EDUCATION ACTIVITIES.

Grants
Contracts

"(a) ACTIVITIES AUTHORIZED.—(1) The Secretary is authorized to make grants to, and enter into contracts with, State educational agencies (in consultation with and with the approval of the States) for activities to improve the interstate and intrastate coordination among State and local educational agencies of the educational programs available for migratory students. Each grant issued under this paragraph shall not exceed 3 years for its stated purpose.

"(2)(A) The Secretary is also authorized to enter into contracts with State educational agencies to operate a system for the transfer among State and local educational agencies of migrant student records (including individualized education programs approved under the Education of the Handicapped Act).

"(B) Except as provided in subparagraph (C), for the purpose of ensuring continuity in the operation of such system, the Secretary shall, not later than July 1 of each year, continue to award such contract to the State educational agency receiving the award in the preceding year, unless a majority of the States notify the Secretary in writing that such agency has substantially failed to perform its responsibilities under the contract during that preceding year.

"(C) Beginning on July 1, 1992, and every 4 years thereafter, the Secretary shall conduct a competition to award such contract.

Effective date.

"(D) No activity under this section shall, for purposes of any Federal law, be treated as an information collection that is conducted or sponsored by a Federal agency.

"(3) Grants or contracts shall also be made under this section to State educational agencies to develop and establish a national program of credit exchange and accrual for migrant students so that such students will be better able to meet graduation requirements and receive their high school diplomas. Such grants or contracts may not exceed 3 years.

"(b) Availability of Funds.—The Secretary shall, from the funds appropriated for carrying out this subpart, reserve for purposes of this section for any fiscal year an amount, determined by the Secretary, which shall not be less than $6,000,000 nor more than 5 percent of the amount appropriated.

"Subpart 2—Programs for Handicapped Children

"SEC. 1221. AMOUNT AND ELIGIBILITY.

20 USC 2791.

"(a) Eligibility for Grant.—(1) A State educational agency shall be eligible to receive a grant under this subpart for any fiscal year for programs (as defined in sections 1222 and 1223) for handicapped children (as defined in paragraph (2)(B)).

"(2) For the purpose of this subpart—

"(A) 'children' includes infants and toddlers described in part H of the Education of the Handicapped Act, as appropriate, and

"(B) 'handicapped children' means children who by reason of their handicap require special education and related services, or in the case of infants and toddlers, require early intervention services and who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities.

"(b) State Educational Agency Application.—In order to receive a grant under this subpart, a State educational agency shall submit an application to the Secretary which provides assurances that—

Grants.

"(1) all handicapped children (other than handicapped infants and toddlers) in the State participating in programs and projects funded under this subpart receive a free appropriate public education and such children and such children's parents are provided all the rights and procedural safeguards under part B of the Education of the Handicapped Act and this subpart and that all handicapped infants and toddlers in the State participating under this subpart receive early intervention services and such infants and toddlers and their families are provided the rights and procedural safeguards under part H of such Act;

"(2) programs and projects receiving assistance under this subpart are administered in a manner consistent with this subpart, subpart 2 of part F, part B of the Education of the Handicapped Act, and as determined by the Secretary to be appropriate, part H of the Education of the Handicapped Act, including the monitoring by such agency of compliance under paragraph (1);

"(3) programs and projects under this subpart will be coordinated with services under the Education of the Handicapped Act;

"(4) for fiscal year 1991, and each subsequent fiscal year, the State educational agency will administer the program authorized by this subpart through the State office responsible for administering part B of the Education of the Handicapped Act;

Reports

"(5) the agency will report annually to the Secretary—

"(A) the number of children served under this subpart for each disability and age category as described in part B of the Education of the Handicapped Act;

"(B) the number of children served under this subpart in each of the educational placements described in section 618(b)(2) of the Education of the Handicapped Act (and will report separately State-operated and State-supported programs and local educational agency programs for children previously served in such State programs); and

"(C) on the uses of funds and the allocation of such funds for such uses under this subpart; and

Reports

"(6) the agency will report to the Secretary such other information as the Secretary may reasonably request.

"(c) Amount of Grant.—(1) Except as provided in subsection (e) and section 1291, the grant which a State educational agency (other than the agency for Puerto Rico) shall be eligible to receive under this section shall be an amount equal to 40 percent of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, of 80 percent of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, of 120 percent of the average per pupil expenditure in the United States), multiplied by the number of handicapped children, from birth through 21, enrolled on December 1, as determined by the Secretary, in programs or schools for handicapped infants, toddlers and children operated or supported by a State agency which—

"(i) is directly responsible for providing free public education for handicapped children (including schools or programs providing special education and related services for handicapped children under contract or other arrangement with such agency); or

"(ii) is directly responsible for providing early intervention services for handicapped infants or toddlers (including schools or programs providing special education and related services for handicapped children under contract or other arrangement with such agency),

in the most recent fiscal year for which satisfactory data are available. The State educational agency shall distribute such funds to the appropriate State agency on the basis of the December 1 child count by distributing an equal amount for each child counted.

Grants. Puerto Rico.

"(2) For each fiscal year, the Secretary shall determine the percentage which the average per pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per pupil expenditure of any of the 50 States. Except as provided in subsection (e), a grant which the Commonwealth of Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of such handicapped children in the Commonwealth of Puerto Rico by the product of—

"(A) the percentage determined under the preceding sentence, and

"(B) 32 percent of the average per pupil expenditure in the United States.

"(d) Counting of Children Transferring From State to Local Programs.—In any case in which a child described in sections 1225(1)(A) and 1225(1)(B)(i) leaves an educational program for handicapped children operated or supported by a State agency in order to participate in such a program operated or supported by a local educational agency, such child shall be counted under subsection (c) if—

"(1) the child was receiving and continues to receive a free appropriate public education; and

"(2) the State educational agency transfers to the local educational agency in whose program such child participates an amount equal to the sums received by such State educational agency under this section which are attributable to such child, to be used for the purpose set forth in section 1223.

"(e) Special Requirement.—The State educational agency may count handicapped children aged 3 to 5, inclusive, in a State only if such State is eligible for a grant under section 619 of the Education of the Handicapped Act.

"SEC. 1222. PROGRAM REQUIREMENTS.

20 USC 2792.

"(a) General Requirements.—A State educational agency shall use the payments made under this subpart for programs and projects (including the acquisition of equipment) which are designed to supplement the special education needs of handicapped children (other than handicapped infants and toddlers) or the early intervention needs of handicapped infants and toddlers. Such programs and projects shall be administered in a manner consistent with this subpart, subpart 2 of part F, part B of the Education of the Handicapped Act, and, as determined by the Secretary to be appropriate, part H of the Education of the Handicapped Act.

"(b) Services.—Funds under this subpart shall be used to supplement the provision of special education and related services for handicapped children (other than handicapped infants and toddlers) or early intervention services for handicapped infants and toddlers.

"(c) Demonstration of Benefit.—Recipients of funds under this subpart shall collect and maintain such evaluations and assessments as may be necessary to demonstrate that the programs and projects were beneficial to the children served.

20 USC 2793.

"SEC. 1223. USES OF FUNDS.

"(a) General Rule.—Programs, and projects authorized under this subpart may include, but are not limited to—

"(1) services provided in early intervention, preschool, elementary, secondary, and transition programs;

"(2) acquisition of equipment and instructional materials;

"(3) employment of special personnel;

"(4) training and employment of education aides;

"(5) training in the use and provision of assistive devices and other specialized equipment;

"(6) training of teachers and other personnel;

"(7) training of parents of handicapped children;

"(8) training of nonhandicapped children to facilitate their participation with handicapped children in joint activities;

"(9) training of employers and independent living personnel involved in assisting the transition of handicapped children from school to the world of work and independent living;

"(10) outreach activities to identify and involve handicapped children and their families more fully in a wide range of educational and recreational activities in their communities; and

"(11) planning for, evaluation of, and dissemination of information regarding such programs and projects assisted under this subpart.

"(b) Prohibition.—Programs and projects authorized under this subpart may not include the construction of facilities.

20 USC 2794.

"SEC. 1224. SERVICE AND PROGRAM APPLICATIONS.

Grants.

"(a) Application Required.—A State agency or local educational agency may receive a grant under this subpart for any fiscal year if it has on file with the State educational agency an application which describes the services, programs, and projects to be conducted with such assistance for a period of not more than 3 years, and each such application has been approved by the State educational agency. Any State educational agency operating programs or projects under this subpart shall prepare a written description of such programs and projects in accordance with subsections (b) and (c).

"(b) Requirements.—At a minimum each such application shall—

"(1) indicate the number of children to be served;

"(2) specify the number of children to be served for each disability and age category as described in part B of the Education of the Handicapped Act;

"(3) describe the purpose or purposes of the project and the method or methods of evaluating the effectiveness of the services, projects, or program;

"(4) specify the services to be provided with the funds furnished under this subpart; and

"(5) include other information the Secretary or State educational agency may request.

"(c) Application Assurances.—Any such application shall provide assurances that—

"(1) all handicapped children in the State (other than handicapped infants and toddlers) participating in programs and projects funded under this subpart receive a free appropriate public education and such children and such children's parents are provided all the rights and procedural safeguards under part B of the Education of the Handicapped Act and this subpart and that all handicapped infants and toddlers in the State participating under this subpart receive early intervention services and such infants and toddlers and their families are provided the rights and procedural safeguards under part H of such Act;

"(2) services, programs, and projects conducted under this subpart are of sufficient size, scope, and quality to give reasonable promise toward meeting the special educational and early intervention needs of children to be served;

"(3) funds made available under the subpart will supplement, not supplant State and local funds in accordance with section 1018(b);

"(4) the agency will maintain its fiscal effort in accordance with section 1018(a);

"(5) the agency will conduct such evaluations and assessments as may be necessary to demonstrate that the programs and projects are beneficial to the children served;

"(6) the parents of children to be served with funds under this subpart are provided an opportunity to participate in the development of its project application; and

"(7) the agency will comply with all reporting requirements in a timely manner.

"(d) **Letter of Request.**—The State educational agency may accept, in lieu of a project application, a letter of request for payment from a local educational agency, if the local agency intends to serve fewer than 5 children with its payment. In such a letter the agency shall include an assurance that the payment will be used to supplement the provision of special education and related services.

"SEC. 1228. ELIGIBLE CHILDREN.

20 USC 2795.

"The children eligible for services under this subpart are—

"(1) those handicapped children from birth to 21, inclusive, who—

"(A) the State is directly responsible for providing special education or early intervention services to (including schools or programs providing special education and related services for handicapped children under contract or other arrangement with such agency), and

"(B)(i) are participating in a State-operated or State-supported school or program for handicapped children (including schools and programs operated under contract or other arrangement with a State agency), or

"(ii) previously participated in such a program and are receiving special education or early intervention services from local educational agencies; and

"(2) other handicapped children, if children described in paragraph (1) have been fully served.

20 USC 2796.

"SEC. 1226. FEDERAL MONITORING REQUIREMENT.

"Whenever the Secretary conducts monitoring visits under part B of the Education of the Handicapped Act, the Secretary shall monitor the program authorized by this subpart, if applicable.

"Subpart 3—Programs for Neglected and Delinquent Children

20 USC 2801.

"SEC. 1211. AMOUNT AND ENTITLEMENT.

"(a) ENTITLEMENT TO GRANTS.—A State agency which is responsible for providing free public education for children in institutions for neglected or delinquent children or in adult correctional institutions shall be entitled to receive a grant under this subpart for any fiscal year (but only if grants received under this subpart are used only for children in such institutions).

"(b) AMOUNT OF GRANT.—(1) Except as provided in section 1291, the grant which such an agency (other than the agency for Puerto Rico) shall be eligible to receive shall be an amount equal to 40 percent of the average per pupil expenditure in the State (or (A) in the case where the average per pupil expenditure in the State is less than 80 percent of the average per pupil expenditure in the United States, of 80 percent of the average per pupil expenditure in the United States, or (B) in the case where the average per pupil expenditure in the State is more than 120 percent of the average per pupil expenditure in the United States, of 120 percent of the average per pupil expenditure in the United States) multiplied by the number of such neglected or delinquent children in average daily attendance, as determined by the Secretary, at schools for such children operated or supported by that agency, including schools providing education for such children under contract or other arrangement with such agency, in the most recent fiscal year for which satisfactory data are available.

Puerto Rico.

"(2) For each fiscal year, the Secretary shall determine the percentage which the average per pupil expenditure in the Commonwealth of Puerto Rico is of the lowest average per pupil expenditure of any of the 50 States. The grant which the Commonwealth of Puerto Rico shall be eligible to receive under this subpart for a fiscal year shall be the amount arrived at by multiplying the number of such neglected or delinquent children in the Commonwealth of Puerto Rico by the product of—

"(A) the percentage determined under the preceding sentence, and

"(B) 32 percent of the average per pupil expenditure in the United States.

20 USC 2802.

"SEC. 1212. PROGRAM REQUIREMENTS.

"(a) USE OF PAYMENTS.—A State agency shall use payments under this subpart only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of children in institutions for neglected or delinquent children, children attending community day programs for neglected and delinquent children, or children in adult correctional institutions. Such programs and projects shall be designed to support educational services supplemental to the basic education of such children which must be provided by the State, and such programs and projects shall be administered and carried out in a manner consistent with subpart 2 of part F and sections 1011(a), 1014, and section 1018 (other than subsection (c)). The transfer of neglected and delinquent student records among State and local educational agencies, institutions, and programs shall include any individualized education programs of such students.

Records.

"(b) COMPLIANCE.—In determining whether programs under this subpart have complied with the supplement not supplant requirement under section 1018(b), programs which are supplementary in terms of the number of hours of instruction students are receiving from State and local sources shall be considered in compliance without regard to the subject areas in which those instructional hours are given.

"(c) THREE-YEAR PROJECTS.—Where a State agency operates programs under this subpart in which children are likely to participate for more than 1 year, the State educational agency may approve the application for a grant under this subpart for a period of more than 1 year, but not to exceed 3 years.

"(d) EVALUATION.—Programs for neglected and delinquent children under this subpart shall be evaluated annually to determine their impact on the ability of such children to maintain and improve educational achievement, to maintain school credit in compliance with State requirements, and to make the transition to a regular program or special education program operated by a local educational agency.

"SEC. 1243. TRANSITION SERVICES.

20 USC 2803.

"(a) TRANSITION SERVICES.—Each State may reserve not more than 10 percent of the amount it receives under section 1241 for any fiscal year to support projects that facilitate the transition of children from State operated institutions for neglected and delinquent children into locally operated programs.

"(b) CONDUCT OF PROJECTS.—Projects supported under this section may be conducted directly by the State agency, or by contracts or other arrangements with one or more local educational agencies, other public agencies, or private nonprofit organizations.

"(c) LIMITATION.—Assistance under this section shall be used only to provide special educational services to neglected and delinquent children in schools other than State operated institutions.

"SEC. 1244. DEFINITIONS.

20 USC 2804.

"For the purposes of this subpart, the following terms have the following meanings:

"(1) The term 'institution for delinquent children', as determined by the State educational agency, means a public or private residential facility that is operated for the care of children who have been determined to be delinquent or in need of supervision.

"(2) The term 'institution for neglected children' means, as determined by the State educational agency, a public or private residential facility (other than a foster home) that is operated for the care of children who have been committed to the institution or voluntarily placed in the institution under applicable State law, due to abandonment, neglect, or death of parents or guardians.

"Subpart 4—General Provisions for State Operated Programs

20 USC 2811

"SEC. 1291. RESERVATION OF FUNDS FOR TERRITORIES.

Appropriation authorization

"There is authorized to be appropriated for each fiscal year for purposes of each of subparts 1, 2, and 3 of this part, an amount equal to not more than 1 percent of the amount appropriated for such year for such subparts, for payments to Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands under each such subpart. The amounts appropriated for each such subpart shall be allotted among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands according to their respective need for such grants, based on such criteria as the Secretary determines will best carry out the purposes of this chapter.

20 USC 2812

"SEC. 1292. DUAL ELIGIBILITY FOR PROGRAMS.

"Neglected and delinquent children under subpart 3 who are eligible for programs for handicapped children under subpart 2, may be counted under each subpart for purposes of grant determination and may be served under each such program.

"PART E—PAYMENTS

20 USC 2821

"SEC. 1401. PAYMENT METHODS.

"The Secretary shall, from time to time, pay to each State, in advance or otherwise, the amount which it and the local educational agencies of that State are eligible to receive under this chapter. Such payments shall take into account the extent (if any) to which any previous payment to such State educational agency under this chapter or chapter 1 of the Education Consolidation and Improvement Act of 1981 (whether or not in the same fiscal year) was greater or less than the amount which should have been paid to it.

20 USC 2822

"SEC. 1402. AMOUNT OF PAYMENTS TO LOCAL EDUCATIONAL AGENCIES.

"From the funds paid to it pursuant to section 1401 each State educational agency shall distribute to each local educational agency of the State which is eligible to receive a grant under this chapter and which has submitted an application approved pursuant to section 1012 the amount for which such application has been approved, and the amount which the local educational agency is eligible to receive under sections 1053 and 1102 except that the amount shall not exceed the amount determined for that local educational agency under this chapter.

20 USC 2823

"SEC. 1403. ADJUSTMENTS WHERE NECESSITATED BY APPROPRIATIONS.

Grants

"(a) Adjustment Allocation.—If the sums appropriated for any fiscal year for making the payments provided for in this chapter are not sufficient to pay in full the total amounts which all local and State educational agencies are entitled to receive under this chapter for such year, the amount available for each grant to a State agency eligible for a grant under subpart 1, 2, or 3 of part D shall be equal to the total amount of the grant as computed under each such subpart. If the remainder of such sums available after the application of the preceding sentence is not sufficient to pay in full the total amounts which all local educational agencies are entitled to receive under subpart 1 of part A of this chapter for such year, the allocations to such agencies shall, subject to section 1006(c) and to adjustments under the next sentence, be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amount so appropriated. The allocation of a local educational agency which would be reduced under the preceding sentence to less than 85 percent of its allocation under subpart 1 of the part A for the preceding fiscal year, shall be increased to such amount, the total of the increases thereby required being derived by proportionately reducing the allocations of the remaining local educational agencies, under the preceding sentence, but with such adjustments as may be necessary to prevent the allocation to any remaining local educational agency from being thereby reduced to less than 85 percent of its allocation for such year.

"(b) Additional Funds Allocation.—(1) If additional funds become available for making payments under this chapter for that year, allocations that were reduced pursuant to subsection (a) shall be increased on the same basis as they were reduced.

Grants.

"(2) In order to permit the most effective use of all appropriations made to carry out this chapter, the Secretary may set dates by which (A) State educational agencies must certify to the Secretary the amounts for which the applications of educational agencies have been or will be approved by the State, and (B) State educational agencies referred to in subpart 1 of part D must file applications. If the maximum grant a local educational agency would receive (after any ratable reduction which may have been required under the first sentence of subsection (a) of this section) is more than an amount which the State educational agency determines, in accordance with regulations prescribed by the Secretary, such agency will use, the excess amount shall be made available first to educational agencies in that State. Determinations of the educational agencies to which such excess amounts shall be made available by the State educational agency in furtherance of the purposes of this chapter shall be in accordance with criteria prescribed by the Secretary which are designed to assure that such excess amounts will be made available to other eligible educational agencies with the greatest need, for the purpose of, where appropriate, redressing inequities inherent in, or mitigating hardships caused by, the application of the provisions of section 1005(a) as a result of such factors as population shifts and changing economic circumstances. In the event excess amounts remain after carrying out the preceding 2 sentences of this section, such excess amounts shall be distributed among the other States as the Secretary shall prescribe for use by local educational agencies in such States for the purposes of this chapter in such manner as the respective State educational agencies shall prescribe.

"SEC. 1404. PAYMENTS FOR STATE ADMINISTRATION.

20 USC 2824.

"(a) In General.—The Secretary is authorized to pay to each State amounts equal to the amounts expended by it for the proper and efficient performance of its duties under this chapter (other than section 1021), except that the total of such payments in any fiscal year shall be the greater of the following:

"(1) 1 percent of the amount allocated to the State and its local educational agencies and to other State agencies as determined for that year under parts A and D; or

Territories, U.S.

"(2) $325,000, or $50,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"(b) **Limitation on Indirect Costs.**—Not more than 15 percent of the State administrative allocation under subsection (a) may be used for indirect costs of the grant.

20 USC 2825.

"SEC. 1405. FUNDS FOR THE IMPLEMENTATION OF SCHOOL IMPROVEMENT PROGRAMS.

"(a) **General Authority.**—The Secretary is authorized to pay, for the purpose of carrying out program improvement plans described in section 1021, to each State an amount equal to—

"(1)(A) 0.25 percent of the amount allocated to the State and its local educational agencies as determined under parts A and D for fiscal years 1989, 1990, and 1991; and

"(B) 0.5 percent of the amount allocated to the State and its local educational agencies as determined under parts A and D for fiscal years 1992 and 1993; or

"(2)(A) $90,000 or $15,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands for fiscal years 1989, 1990, and 1991; and

Territories, U.S.

"(B) $180,000 or $30,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands for fiscal years 1992 and 1993.

"(b) **Limitations.**—(1) No funds made available to States under subsection (a) may be used for administrative functions related to any provisions of this chapter.

"(2) Funds made available to States under this section shall only be used for direct educational services in schools implementing program improvement plans as described under section 1021.

"(3) Parents of participating children, school staff, the local educational agency and the State educational agency shall jointly agree to the selection of providers of technical assistance and the best use of funds available under subsection (a) for the effective implementation of the program improvement plan. Uses of such funds include assistance from—

"(A) an institution of higher education;

"(B) federally supported educational laboratory or center;

"(C) State personnel with expertise in educational improvement;

"(D) locally, State, or nationally based consultants; and

"(E) other possible providers of the specific services required by the school's program plan.

20 USC 2826.

"SEC. 1406. LIMITATION ON GRANT TO THE COMMONWEALTH OF PUERTO RICO.

"Notwithstanding the provisions of this chapter, the amount paid to the Commonwealth of Puerto Rico under this chapter for any fiscal year shall not exceed 150 percent of the amount received by the Commonwealth of Puerto Rico under chapter 1 of the Education Consolidation and Improvement Act or under this chapter in the preceding fiscal year. Any excess over such amount shall be used to ratably increase the allocations under subpart 1 of part A of the other local educational agencies whose allocations do not exceed the maximum amount for which the agencies are eligible under section 1005.

"PART F—GENERAL PROVISIONS

"Subpart 1—Federal Administration

"SEC. 1431. FEDERAL REGULATIONS. 20 USC 2831

"(a) In General.—The Secretary is authorized to issue such regulations as are considered necessary to reasonably ensure that there is compliance with the specific requirements and assurances required by this chapter.

"(b) Procedure.—(1) Prior to publishing proposed regulations pursuant to this chapter, the Secretary shall convene regional meetings which shall provide input to the Secretary on the content of proposed regulations. Such meetings shall include representatives of Federal, State, and local administrators, parents, teachers, and members of local boards of education involved with implementation of programs under this chapter.

"(2) Subsequent to regional meetings and prior to publishing proposed regulations in the Federal Register, the Secretary shall prepare draft regulations and submit regulations on a minimum of 4 key issues to a modified negotiated rulemaking process as a demonstration of such process. The modified process shall waive application of the Federal Advisory Committee Act, but shall otherwise follow the guidance provided in the Administrative Conference of the United States in Recommendation 82-4, 'Procedures for Negotiating Proposed Regulations' (47 Fed. Reg. 30708, June 18, 1982) and any successor regulation. Participants in the demonstration shall be chosen by the Secretary from among participants in the regional meetings, representing the groups described in paragraph (1) and all geographic regions. The demonstration shall be conducted in a timely manner in order that final regulations may be issued by the Secretary within the 240-day period required by section 431(g) of the General Education Provisions Act.

"(3) In an emergency situation in which regulations pursuant to this chapter must be issued within a very limited time to assist State and local educational agencies with the operation of the program, the Secretary may issue a regulation without such prior consultation, but shall immediately thereafter convene regional meetings to review the emergency regulation prior to issuance in final form.

Federal Register, publication.

"(c) Special Rule.—Funds made available under sections 1437 and 1463 of this chapter shall be released for expenditure by the Secretary only at such time as final regulations pertaining to this chapter are published in the Federal Register.

"(d) Limitation.—Programs under this chapter may not be required to follow any 1 instructional model, such as the provision of services outside the regular classroom or school program.

"SEC. 1432. AVAILABILITY OF APPROPRIATIONS. 20 USC 2832.

"(a) General Provision.—Notwithstanding any other provision of law, unless expressly in limitation of this section, funds appropriated in any fiscal year to carry out activities under this chapter shall become available for obligation on July 1 of such fiscal year and shall remain available for obligation until the end of the subsequent fiscal year.

"(b) Carryover and Waiver.—Notwithstanding section 412 of the General Education Provisions Act, subsection (a) or any other provision of law—

"(1) not more than 25 percent of funds appropriated for fiscal year 1989 and 15 percent of funds appropriated for fiscal year 1990 and each subsequent year may remain available for obligation for 1 additional year;

"(2) a State educational agency may grant a 1-time waiver of the percentage limitation under paragraph (1) if the agency determines that the request by a local educational agency is reasonable and necessary or may grant a waiver in any fiscal year in which supplemental appropriations for this chapter become available for obligation; and

"(3) the percentage limitation under paragraph (1) shall not apply with respect to any local educational agency which receives less than $50,000 under this chapter for any fiscal year.

20 USC 2833

"SEC. 1433. WITHHOLDING OF PAYMENTS.

"(a) WITHHOLDING.—Whenever the Secretary, after reasonable notice to any State educational agency and an opportunity for a hearing on the record, finds that there has been a failure to comply substantially with any assurances required to be given or conditions required to be met under this chapter, the Secretary shall notify such agency of these findings and that beginning 60 days after the date of such notification, further payments will not be made to the State under this chapter, or affected part or subpart thereof (or, in the Secretary's discretion, that the State educational agency shall reduce or terminate further payments under the affected part or subpart thereof, to specified local educational agencies or State agencies affected by the failure) until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, (1) no further payments shall be made to the State under the part or subpart thereof, or (2) payments by the State educational agency under the part or subpart thereof shall be limited to local educational agencies and State agencies not affected by the failure, or (3) payments to particular local educational agencies shall be reduced, as the case may be.

"(b) NOTICE TO PUBLIC.—Upon submission to a State of a notice under subsection (a) that the Secretary is withholding payments, the Secretary shall take such action as may be necessary to bring the withholding of payments to the attention of the public within the State.

20 USC 2834

"SEC. 1434. JUDICIAL REVIEW.

"(a) FILING APPEALS.—If any State is dissatisfied with the Secretary's action under section 1433(a), such State may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall act to suspend any withholding of funds by the Secretary pending the judgment of the court and prior to a final action on any review of such judgment. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary's action was based, as provided in section 2112 of title 28, United States Code.

Records

"(b) BASIS OF REVIEW.—For the purposes of this chapter, the basis of review shall be as provided in section 458(c) of the General Education Provisions Act.

"(c) JUDICIAL APPEALS.—Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari of certification as provided in section 1254 of title 28, United States Code.

"SEC. 1435. EVALUATION.

20 USC 2835.

"(a) NATIONAL STANDARDS.—In consultation with State and local educational agencies (including members of State and local boards of education and parent representatives), the Secretary shall develop national standards for local evaluation of programs under this chapter. In developing such standards, the Secretary may use the Title I Evaluation and Reporting System designed and implemented under title I of this Act, as in effect prior to the date of the enactment of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 as the model. The Secretary shall provide advance notification to State and local educational agencies of the requirements of such national standards of evaluations.

"(b) REPORTS.—The Secretary shall submit a comprehensive and detailed report concerning State and local evaluation results based on data collected under sections 1019, 1107, 1202(a)(6), and 1242(d) to the appropriate committees of the Congress on a biennial basis.

"SEC. 1436. COORDINATION OF FEDERAL, STATE, AND LOCAL ADMINISTRATION.

20 USC 2836.

"(a) POLICY MANUAL.—The Secretary shall, not later than 6 months after the publication of final regulations with respect to this chapter, prepare and distribute to State educational agencies, State agencies operating programs under part D, and local educational agencies, and shall make available to parents and other interested individuals, organizations, and agencies, a policy manual for this chapter to—

"(1) assist such agencies in (A) preparing applications for program funds under this chapter, (B) meeting the applicable program requirements under this chapter, and (C) enhancing the quality, increasing the depth, or broadening the scope of activities for programs under this chapter;

"(2) assist State educational agencies in achieving proper and efficient administration of programs funded under this chapter;

"(3) assist parents to become involved in the planning for, and implementation and evaluation of, programs and projects under this chapter; and

"(4) ensure that officers and employees of the Department of Education, including officers and employees of the Secretary and officers and employees of such Department charged with auditing programs carried on under this chapter, uniformly interpret, apply, and enforce requirements under this chapter throughout the United States.

"(b) CONTENTS OF POLICY MANUAL.—The policy manual shall, with respect to programs carried out under this chapter, contain descriptions, statements, procedural and substantive rules, opinions, policy statements and interpretations and indices to and amendments of the foregoing, and in particular, whether or not such items are required under section 552 of title 5, United States Code to be published or made available. The manual shall include (but not be limited to)—

"(1) a statement of the requirements applicable to the programs carried out under this chapter, including such requirements contained in this chapter, the General Education Provisions Act, other applicable statutes, and regulations issued under the authority of such statutes;

"(2) an explanation of the purpose of each requirement and its interrelationship with other applicable requirements;

"(3) a statement of the procedures to be followed by the Secretary with respect to proper and efficient performance of administrative responsibilities;

"(4) summaries of (A) advisory opinions interpreting and applying applicable requirements, and (B) final audit determinations relevant to programs under this chapter, including examples of actual applications of the legal requirements of applicable statutes and regulations;

"(5) model forms and instructions developed by the Secretary for use by State and local educational agencies, at their discretion, including, but not limited to, application forms, application review checklists, and instruments for monitoring programs under this chapter;

"(6) summaries of appropriate court decisions concerning programs under this chapter; and

"(7) model forms, policies, and procedures developed by State educational agencies.

"(c) Response to Inquiries.—The Secretary shall respond with written guidance not more than 90 days after any written request (return receipt requested) from a State or local educational agency regarding a policy, question, or interpretation under this chapter. In the case of a request from a local educational agency, such agency must first have addressed its request to the State educational agency.

"(d) Technical Assistance.—From funds available to the Secretary for studies, evaluations, and technical assistance, the Secretary shall continue, establish, and expand technical assistance centers to provide assistance to State and local educational agencies with respect to programs under this chapter. In providing such assistance, centers shall place particular emphasis on information relating to program improvement, parental involvement, instruction, testing and evaluation, and curriculum under this chapter. Such centers shall be accessible through electronic means.

"(e) Federal Dissemination of Exemplary Programs.—To the extent possible, the Secretary shall provide information to State and local educational agencies regarding opportunities for dissemination of exemplary programs under this chapter through the National Diffusion Network. The Secretary shall emphasize programs which are exemplary in their implementation of the parent involvement provisions of section 1016. The Secretary shall coordinate Federal exemplary project identification activities with the National Diffusion Network.

"(f) Federal Review of State and Local Administration.—The Secretary shall provide for a review of State and local administration of programs under this chapter. In addition to such other areas as the Secretary may consider appropriate, the review shall consider State policies, guidance materials, monitoring and enforcement activities, and the detection and resolution of problems of local noncompliance.

"SEC. 1437. AUTHORIZATION OF APPROPRIATIONS FOR EVALUATION AND TECHNICAL ASSISTANCE. 20 USC 2837.

"There are authorized to be appropriated for the purposes of sections 1435 and 1436 for other Federal evaluation, technical assistance, and research activities related to this chapter, and authorized studies under this chapter, $4,000,000 for the fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 through 1993.

"SEC. 1438. APPLICATION OF GENERAL EDUCATION PROVISIONS ACT. 20 USC 2838.

"(a) General Rule.—Except as otherwise specifically provided by this section, the General Education Provisions Act shall apply to the programs authorized by this chapter.

"(b) Supercession Rule.—The following provisions of the General Education Provisions Act shall be superseded by the specified provisions of this chapter with respect to the programs authorized by this subtitle:

"(1) Section 408(a)(1) of the General Education Provisions Act is superseded by section 1431 of this chapter. 20 USC 1221e-3.

"(2) Section 426(a) of such Act is superseded by section 1437 of this chapter. 20 USC 1231e.

"(3) Section 427 of such Act is superseded by section 1016 of this chapter. 20 USC 1231d.

"(4) Section 430 of such Act is superseded by sections 1012, 1056, 1104(b), 1125, 1202(a), and 1224 of this chapter. 20 USC 1231g.

"(5) Section 455 of such Act is superseded by section 1433 of this chapter. 20 USC 1234d.

"(6) Section 458 of such Act is superseded by section 1434 of this chapter with respect to judicial review of withholding of payments. 20 USC 1234g.

"(c) Exclusion Rule.—Sections 434, 435, and 436 of the General Education Provisions Act, except to the extent that such sections relate to fiscal control and fund accounting procedures, shall not apply to the programs authorized by this chapter and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this chapter.

"SEC. 1439. NATIONAL COMMISSION ON MIGRANT EDUCATION. 20 USC 2839.

"(a) Establishment.—There is established, as an independent agency within the executive branch, a National Commission on Migrant Education (referred to in this section as the 'Commission').

"(b) Membership.—

"(1) The Commission shall be composed of 12 members. Four of the members shall be appointed by the President. Four of the members shall be appointed by the Speaker of the House, including 2 Members of the House, 1 from each political party. Four of the members shall be appointed by the President pro tempore of the Senate, including 2 Members of the Senate, 1 from each political party.

"(2) The chairman shall be designated by the President from among the members appointed by the President. If the President has not appointed 4 members of the Commission and designated a chairman within 60 days of the enactment of this Act, the members of the Commission appointed by the Speaker of the House and the President pro tempore of the Senate shall elect a chairman who shall continue to serve for the duration of the Commission.

"(3) Any vacancy in the Commission shall be filled in the same manner as the original appointment.

"(c) Study.—The Commission shall make a study of the following issues:

"(1) What are the demographics of the children of migratory workers today compared with 10 years ago and how are the demographics expected to change over the next decade.

"(2) What are the individual roles of the Federal, State, and private sectors in migrant affairs; how has each sector enhanced migrant educational opportunities, including entry into all types of postsecondary education programs; and should Federal programs include incentives for private and State participation.

"(3) What is the number of unserved or underserved migrant students who are eligible for the programs under this chapter nationwide and on a State-by-State basis.

"(4) How can migrant education, migrant health, migrant Head Start, Job Training Partnership programs serving migrants, HEP/CAMP, and adult literacy programs be integrated and coordinated at both the Federal and State levels.

"(5) How many migrant students are identified as potential drop-outs; how might this issue be addressed at the national policy level; and what effect does the migrant mother have on her children's performance.

"(6) How do the migrant programs under this chapter vary from State to State; how do their administrative costs vary; how do parent involvement and services vary.

"(7) What role has the Migrant Student Record Transfer System performed in assisting the migrant population; to what degree is it utilized for enhancing the education program at the local level and by the classroom teacher; is it cost effective; and how well would such a system adapt to other mobile populations like those in the inner cities or those in the Department of Defense overseas schools.

"(8) How many prekindergarten programs are available to migratory children; what services are they provided; what is the degree of parent involvement with these programs; what is a typical profile of a student in such a program.

"(9) How well are migrant handicapped and gifted and talented students identified and served; and what improvements might be made in this area.

"(10) How many of the students being served are identified as 'currently migrant' and how many are 'formerly migrant'; what differences are there in their needs; and how do services provided differ between those of 'currently migrant' and those of 'formerly migrant'.

"(11) How does interstate and intrastate coordination occur at the State and local levels.

"(12) Is there a need to establish a National Center for Migrant Affairs and what are the options for funding such a Center.

"(d) Reports.—

"(1) The Commission shall prepare and submit reports and recommendations to the President and to the appropriate committees of the Congress on the studies required to be conducted under this section. The reports for the studies required shall be submitted as soon as practicable.

"(2) Any recommendations and reports submitted under this paragraph which contemplate changes in Federal legislation shall include draft legislation to accomplish the recommendations.

"(e) SPECIAL STUDY ON THE MIGRANT STUDENT RECORDS TRANSFER SYSTEM.—(1) The Commission shall conduct a study of the function and the effectiveness of the Migrant Student Records Transfer System.

"(2) The Commission shall prepare and submit to the Secretary of Education and to the Congress, not later than 2 years after the first meeting of the Commission, a report on the study required by paragraph (1). Reports.

"(f) COMPENSATION.—

"(1) Members of the Commission who are officers or full-time employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States; but they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(2) Members of the Commission who are not officers or full-time employees of the United States may each receive $150 per diem when engaged in the actual performance of duties vested in the Commission. In addition, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

"(f) STAFF.—Such personnel as the Commission deems necessary may be appointed by the Commission without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subtitle III of chapter 53 of such title relating to classification and General Schedule pay rates, but no individual so appointed shall be paid in excess of the rate authorized for GS-18 of the General Schedule.

"(g) ADMINISTRATION.—

"(1) The Commission or, on the authorization of the Commission, any committee thereof, may, for the purpose of carrying out the provisions of this section, hold such hearings and sit and act at such times and such places within the United States as the Commission or such committee may deem advisable.

"(2) In carrying out its duties under this section, the Commission shall consult with other Federal agencies, representatives of State and local governments, and private organizations to the extent feasible.

"(3) The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality, information, suggestions, estimates, and statistics for the purpose of this section, and each such department, bureau, agency, board, commission, office, establishment, or instrumentality is authorized and directed, to the extent permitted by law, to furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the Chairman.

Contracts

"(4) For the purpose of securing the necessary data and information, the Commission may enter into contracts with universities, research institutions, foundations, and other competent public or private agencies. For such purpose, the Commission is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code.

"(5) The heads of all Federal agencies are, to the extent not prohibited by law, directed to cooperate with the Commission in carrying out this section.

"(6) The Commission is authorized to utilize, with their consent, the services, personnel, information, and facilities of other Federal, State, local, and private agencies with or without reimbursement.

Grants
Gifts and property

"(7) The Commission shall have authority to accept in the name of the United States, grants, gifts, or bequests of money for immediate disbursement in furtherance of the functions of the Commission. Such grants, gifts, or bequests, after acceptance by the Commission, shall be paid by the donor or the donor's representative to the Treasurer of the United States whose receipts shall be their acquittance. The Treasurer of the United States shall enter them in a special account to the credit of the Commission for the purposes in each case specified.

"(8) Six members of the Commission shall constitute a quorum, but a lesser number of 2 or more may conduct hearings.

"(h) TERMINATION.—The Commission shall terminate 3 years after the date of its first meeting.

Effective date

"(i) AUTHORIZATION OF APPROPRIATIONS.—Effective October 1, 1988, there is authorized to be appropriated $2,000,000 to carry out the provisions of this section, which shall remain available until expended or until the termination of the Commission, whichever occurs first.

"Subpart 2—State Administration

20 USC 2851

"SEC. 1151. STATE REGULATIONS.

"(a) IN GENERAL.—(1) Except as provided in paragraph (2), nothing in this chapter may be interpreted to preempt, prohibit, or encourage State regulations issued pursuant to State law which are not inconsistent with the provisions of this chapter, regulations promulgated under this chapter, or other applicable Federal statutes and regulations.

"(2) State rules or policies may not limit local school districts' decisions regarding the grade levels to be served; the basic skills areas (such as reading, mathematics, or language arts) to be addressed; instructional settings, materials or teaching techniques to be used; instructional staff to be employed (as long as such staff meet State certification and licensing requirements for education personnel); or other essential support services (such as counseling and other pupil personnel services) to be provided as part of the programs authorized under this chapter.

"(3) Nothing in this subsection may be construed to inhibit the State educational agency's responsibility to work jointly with local educational agencies and other State agencies receiving funds under this chapter in program improvement activities pursuant to section

1021 where the State may suggest various activities and approaches as it works with such agencies to develop program improvement plans.

"(b) Review by Committee of Practitioners.—Before publication of any proposed or final State rule or regulation pursuant to this chapter, each such rule shall be reviewed by a State committee of practitioners which shall include administrators, teachers, parents, and members of local boards of education, and on which a majority of the members shall be local educational agency representatives. In an emergency situation where such regulation must be issued within a very limited time to assist local educational agencies with the operation of the program, the State educational agency may issue a regulation without such prior consultation, but shall immediately thereafter convene a State committee of practitioners to review the emergency regulation prior to issuance in final form.

"(c) Identification as State Requirement.—The imposition of any State rule or policy relating to the administration and operation of programs funded by this chapter (including those based on State interpretation of any Federal law, regulation, or guideline) shall be identified as a State imposed requirement.

"SEC. 1452. RECORDS AND INFORMATION.

20 USC 2852.

"Each State educational agency shall keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this chapter).

"SEC. 1453. ASSIGNMENT OF PERSONNEL.

20 USC 2853.

"(a) Limitations.—Public school personnel paid entirely by funds made available under this chapter may be assigned limited supervisory duties which are assigned to similarly situated personnel who are not paid with such funds, and such duties need not be limited to classroom instruction or to the benefit of children participating in programs or projects funded under this chapter. The time spent by public school personnel on duties described in the preceding sentence may not exceed either—

"(1) the same proportion of total work time as prevails with respect to similarly situated personnel at the same school site, or

"(2) one period per day,

whichever is less.

Wages

"(b) Use in State Programs.—If a State carries out a program as defined under section 1018(d), the State may use funds under this chapter to pay salaries of personnel assigned to both the State program and the program under this chapter for administration, training, and technical assistance, if the State educational agency maintains time distribution records reflecting the actual amount of time spent by each such employee signed by that employee's supervisor, and costs are charged on a prorated basis to both programs.

"SEC. 1454. PROHIBITION REGARDING STATE AID.

20 USC 2854.

"No State shall take into consideration payments under this chapter in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children.

"Subpart 3—Rural Educational Opportunities

20 USC 2861.

"SEC. 1456. PROGRAM AUTHORIZED.

Grants.
Contracts.

"(a) General Authority.—The Secretary shall make grants to, or enter into contracts with, institutions of higher education, private nonprofit agencies and organizations, regional educational laboratories, technical assistance centers established pursuant to section 1436(d), public agencies, State education agencies, or combinations of such agencies or institutions within particular regions of the United States, to pay all or part of the cost of operating at least 10 rural assistance programs. The Secretary may not make a grant to, or enter into a contract with, any agency, institution, organization, or combination thereof under the preceding sentence unless such agency, institution, organization, or combination thereof has extensive experience providing educational assistance to State and local educational agencies.

Reports.

"(b) Functions of Regional Rural Assistance Programs.—Each regional rural assistance program established under subsection (a) shall provide technical assistance, consultation, training, and such other assistance as will assist State educational agencies and local educational agencies in the region to improve the quality of the education provided to educationally disadvantaged children participating in programs under this chapter who reside in rural areas or attend small schools. Each such program shall give special consideration to, and report on, problems related to districts with declining enrollments and ways in which districts can combine management to provide effective programs.

20 USC 2862.

"SEC. 1457. APPLICATION PRIORITY REQUIREMENTS.

"(a) In carrying out this subpart, the Secretary shall give priority to applicants which describe assistance to school districts in local educational agencies in rural areas—

"(1) with the highest concentrations of children from low-income families;

"(2) that have a significant number or percentage of schools serving children from low-income families; and

"(3) in which there are a significant number of schools in which evaluations indicate lack of substantial progress toward meeting desired outcomes, no improvement, or a decline in aggregate performance by the children participating in programs under this chapter.

"(b) Applicants shall consult with State educational agencies and local educational agencies in the application process.

20 USC 2863.

"SEC. 1458. COORDINATION, DISSEMINATION, AND REPORT.

"(a) Coordination.—Each program established under this subpart shall—

"(1) coordinate its activities with technical assistance centers established under section 1436(d),

"(2) coordinate its activities with the activities of local educational agencies and State educational agencies under section 1021, and

"(3) assist in identifying successful programs and practices for dissemination through existing dissemination networks and efforts.

Rural areas.

"(b) Dissemination and Report.—(1) Each rural assistance program shall be accessible through electronic means.

"(2) Regional rural assistance programs shall submit a report to the Secretary every 2 years containing such reasonable information about its activities as the Secretary may request, but including at a minimum information on efforts to provide effective services under this chapter in rural school districts facing declining enrollments, with particular attention to issues inherent in consolidating, jointly administering, or otherwise combining the resources of 2 or more districts.

"SEC. 1460. AUTHORIZATION OF APPROPRIATIONS.

20 USC 2864.

"There are authorized to be appropriated $10,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993.

"Subpart 4—Studies

"SEC. 1461. REPORT ON STATE AND LOCAL EVALUATIONS.

20 USC 2881.

"The Secretary shall submit a comprehensive and detailed report concerning State and local evaluation results based on data collected under sections 1019, 1107(a), 1202(a)(6), and 1242(d) to the appropriate committees of the Congress on a biennial basis.

"SEC. 1462. NATIONAL STUDY ON EFFECT OF PROGRAMS ON CHILDREN.

20 USC 2882.

Contracts.

"(a) NATIONAL LONGITUDINAL STUDY.—The Secretary shall contract with a qualified organization or agency to conduct a national longitudinal study of eligible children participating in programs under this chapter. The study shall assess the impact of participation by such children in chapter 1 programs until they are 18 years of age. The study shall compare educational achievement of those children with significant participation in chapter 1 programs and comparable children who did not receive chapter 1 services. Such study shall consider the correlations between participation in programs under this chapter and academic achievement, delinquency rates, truancy, school dropout rates, employment and earnings, and enrollment in postsecondary education. The study shall be conducted throughout the country in urban, rural, and suburban areas and shall be of sufficient size and scope to assess and evaluate the effect of the program in all regions of the Nation.

Rural areas.
Urban areas.
Suburban areas.

"(b) FOLLOW-UP.—The agency or organization with which the Secretary has entered a contract under subsection (a) shall conduct a follow-up of the initial survey which shall include a periodic update on the participation and achievement of a representative group of children who participated in the initial study. Such follow-up shall evaluate the effects of participation until such children are 25 years of age.

"(c) REPORT.—A final report summarizing the findings of the study shall be submitted to the appropriate committees of the Congress not later than January 1, 1997; an interim report shall be so submitted not later than January 1, 1993.

"SEC. 1463. AUTHORIZATION OF APPROPRIATIONS.

20 USC 2883.

"There are authorized to be appropriated $4,000,000 for the fiscal year 1989, $4,200,000 for the fiscal year 1990, $4,400,000 for the fiscal year 1991, $4,700,000 for the fiscal year 1992, and $5,000,000 for the fiscal year 1993 for carrying out sections 1461 and 1462.

"Subpart 5—Definitions

20 USC 2891

"SEC. 1471. DEFINITIONS.

"Except as otherwise provided, for purposes of this Act:

"(1) The term 'average daily attendance' means attendance determined in accordance with State law, except that notwithstanding any other provision of this chapter, where the local educational agency of the school district in which any child resides makes or contracts to make a tuition payment for the free public education of such child in a school situated in another school district, for purposes of this chapter the attendance of such child at such school shall be held and considered (A) to be in attendance at a school of the local educational agency so making or contracting to make such tuition payment, and (B) not to be in attendance at a school of the local educational agency receiving such tuition payment or entitled to receive such payment under the contract.

"(2) The term 'average per pupil expenditure' means in the case of a State or the United States, the aggregate current expenditures, during the third fiscal year preceding the fiscal year for which the computation is made (or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available), of all local educational agencies in the State, or in the United States (which for the purposes of this subsection means the 50 States, and the District of Columbia), as the case may be, plus any direct current expenditures by the State for operation of such agencies (without regard to the source of funds from which either of such expenditures are made), divided by the aggregate number of children in average daily attendance to whom such agencies provided free public education during such preceding year.

"(3) The term 'community-based organization' means a private nonprofit organization which is representative of a community or significant segments of a community and which provides educational or related services to individuals in the community.

"(4) The term 'construction' includes the preparation of drawings and specifications for school facilities; erecting, building, acquiring, altering, remodeling, improving, or extending school facilities; and the inspection and supervision of the construction of school facilities.

"(5) The term 'county' means those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties.

"(6) The term 'current expenditures' means expenditures for free public education, including expenditures for administration, instruction, attendance, and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities, but not including expenditures for community services, capital outlay, and debt service, or any expenditures made from funds granted under this chapter, chapter 2 of this title, or chapter 1 or 2 of the Education Consolidation and Improvement Act of 1981.

"(7) The term 'effective schools programs' means school-based programs that may encompass preschool through secondary school levels and that have the objective of (A) promoting school-level planning, instructional improvement, and staff development, (B) increasing the academic achievement levels of all children and, particularly, educationally deprived children, and (C) achieving as ongoing conditions in the school the following factors identified through effective school research as distinguishing effective from ineffective schools—

"(i) strong and effective administrative and instructional leadership that creates consensus on instructional goals and organizational capacity for instructional problem solving;

"(ii) emphasis on the acquisition of basic and higher order skills;

"(iii) a safe and orderly school environment that allows teachers and pupils to focus their energies on academic achievement;

"(iv) a climate of expectations that all children can learn under appropriate conditions; and

"(v) continuous assessment of students and programs to evaluate the effects of instruction.

"(8) The term 'elementary school' means a day or residential school which provides elementary education, as determined under State law.

"(9) The term 'equipment' includes machinery, utilities, and building equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials.

"(10) The term 'institution of higher education' has the meaning given that term in section 1201(a) of the Higher Education Act of 1965.

"(11) The term 'free public education' means education which is provided at public expense, under public supervision and direction, and without tuition charge, and which is provided as elementary or secondary school education in the applicable State, except that such term does not include any education provided beyond grade 12.

"(12) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

"(13) The term 'more advanced skills' means skills including reasoning, analysis, interpretation, problem-solving, and decisionmaking as they relate to the particular subjects in which instruction is provided under programs supported by this chapter.

"(14) The term 'parent' includes a legal guardian or other person standing in loco parentis.

"(15) The term 'parent advisory council' means a body composed primarily of members who are parents of children served by the programs or projects assisted under this chapter and who are elected by such parents, in order to advise the State or local educational agency in the planning, implementation, and evaluation of programs under this chapter.

"(16) The term 'project area' means a school attendance area having a high concentration of children from low-income families which, without regard to the locality of the project itself, is designated as an area from which children are to be selected to participate in a program or project assisted under this chapter.

"(17) The terms 'pupil services personnel' and 'pupil services' mean school counselors, school social workers, school psychologists, and other qualified professional personnel involved in providing assessment, diagnosis, counseling, educational, therapeutic, and other necessary services as part of a comprehensive program to meet student needs, and the services provided by such individuals.

"(18) The term 'school attendance area' means in relation to a particular school, the geographical area in which the children who are normally served by that school reside.

"(19) The term 'school facilities' means classrooms and related facilities (including initial equipment) for free public education and interests in land (including site, grading, and improvements) on which such facilities are constructed, except that such term does not include those gymnasiums and similar facilities intended primarily for exhibitions for which admission is to be charged to the general public.

"(20) The term 'Secretary' means the United States Secretary of Education.

"(21) The term 'secondary school' means a day or residential school which provides secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

"(22) The term 'State' means a State, the Commonwealth of Puerto Rico, Guam, the District of Columbia, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"(23) The term 'State educational agency' means the officer or agency primarily responsible for the State supervision of public elementary and secondary schools.

"Subpart 6—Miscellaneous Provisions

20 USC 2901.

"SEC. 1491. TRANSITION PROVISIONS.

Grants. Contracts.

"(a) REGULATIONS.—All orders, determinations, rules, regulations, permits, grants, and contracts, which have been issued by the Secretary under chapter 1 of the Education Consolidation and Improvement Act of 1981 and title I of this Act (as in effect on the date before the effective date of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988), or which are issued under such Acts on or before the effective date of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 hall continue in effect until modified or revoked by the Secretary, y a court of competent jurisdiction, or by operation of law.

"(b) EFFECT ON PENDING PROCEEDINGS.—The provisions of this hapter shall not affect administrative or judicial proceedings pending on the effective date of this section under chapter 1 of the Education Consolidation and Improvement Act of 1981 or this title.

"(c) TRANSITION.—With respect to the period beginning on July 1, 988, and ending June 30, 1989, no recipient of funds under this hapter, or chapter 2 of this title, or under chapter 1 or 2 of the Education Consolidation and Improvement Act of 1981 shall be held o have expended such funds in violation of the requirements of this Act or of such Act if such funds are expended either in accordance with this Act or such Act.

Effective date.
Termination date.

APPENDIX B

federal register

Friday
May 19, 1989

Part II

Department of Education

34 CFR Part 75 et al.

Chapter 1 Program in Local Educational Agencies; Final Regulations

PART 200—CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES

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Authority: 20 U.S.C. 2701–2731, 2821–2838, 2851–2854, 2891–2901, unless otherwise noted.

Subpart A—General

§ 200.1 What is the Chapter 1 Program in Local Educational Agencies?

(a) Under the Chapter 1 Program in Local Educational Agencies (LEAs)—referred to in this part as the Chapter 1 LEA Program—the Secretary provides Federal financial assistance for projects designed to meet the special educational needs of—

(1) Educationally deprived children in LEAs;

(2) Children in local institutions for neglected or delinquent children, including children in local correctional institutions; and

(3) Educationally deprived Indian children under section 1005(d) of the Act.

(b)(1) The purpose of assistance under this part is to improve the educational opportunities of educationally deprived children by helping these children—

(i) Succeed in the regular program of the LEA;

(ii) Attain grade-level proficiency; and

(iii) Improve achievement in basic and more advanced skills.

(2) The purpose is accomplished through means such as supplemental education programs, schoolwide programs, and the increased involvement of parents in their children's education.

(Authority: 20 U.S.C. 2701)

§ 200.2 Who is eligible for a grant?

The Secretary provides funds under the Chapter 1 LEA Program to—

(a) States, through their respective State educational agencies (SEAs); and

(b) The Secretary of the Interior for Indian children referred to in § 200.1(a)(3).

(Authority: 20 U.S.C. 2711–2712)

§ 200.3 Who is eligible for a subgrant?

(a) *General rule.* (1) Except as provided in paragraph (d) of this section, an LEA that qualifies under paragraph (b) or (c) of this section is eligible for a subgrant under the chapter 1 LEA Program.

(2) An SEA provides two types of subgrants—basic grants and concentration grants—to qualifying LEAs.

(b) *Basic grants.* An LEA is eligible for a basic grant if—

(1) There are at least 10 children counted under section 1005(c) of the Act in the school district of the LEA; or

(2) Satisfactory data on a school district basis are not available but the school district served by the LEA is located, in whole or in part, in a county in which there are at least 10 children counted under section 1005(c) of the Act.

(c) *Concentration grants.* (1) An LEA is eligible for a concentration grant if—

(i) The LEA is eligible for a basic grant under paragraph (b) of this section;

(ii) The school district of the LEA is located, in whole or in part, in a county in which the number of children counted under section 1005(c) of the Act in the school districts of LEAs in the county in the preceding fiscal year exceeds—

(A) 6,500; or

(B) 15 percent of the total number of children aged 5 to 17, inclusive, in the school districts of LEAs in the county in the preceding fiscal year; and

(iii) The number of children counted for purposes of § 200.23 or § 200.24 in the preceding fiscal year in the school district of the LEA exceeds—

(A) 6,500; or

(B) 15 percent of the total number of children aged 5 to 17, inclusive in the school district of the LEA in the preceding fiscal year.

(2) An LEA that does not qualify for a concentration grant under paragraph (c)(1) of this section may receive a concentration grant under § 200.25(b).

(d) *Exception.* This section does not apply to Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Secretary of the Interior.

(Authority: 20 U.S.C. 2711–2712)

§ 200.4 What kind of activities may an LEA conduct?

(a) Under the Chapter 1 LEA Program, an LEA may conduct only projects that are designed to provide supplemental services to meet the special educational needs of educationally deprived children at the preschool, elementary, and secondary school levels.

(b) An LEA is encouraged to—

(1) Develop programs to assist participating children to improve achievement in basic and more advanced skills; and

(2) Consider year-round services and activities, including intensive summer school programs.

(c) Authorized activities to meet the special educational needs of educationally deprived children include—

(1) Acquisition of equipment and instructional materials;

(2) Acquisition of books and school library resources;

(3) Employment of special instructional personnel, school counselors, and other pupil services personnel;

(4) Employment and training of education aides;

(5) Payments to teachers of amounts in excess of regular salary schedules as a bonus for service in schools serving project areas;

(6) Training of teachers, librarians, other instructional and pupil services personnel, and, as appropriate, early childhood education professionals;

(7) Construction, if necessary, of school facilities;

(8) Parental involvement activities;

(9) Planning for and evaluation of Chapter 1 projects; and

(10) Other allowable activities.

(d)(1) With the approval of the SEA, an LEA may use up to and including five percent of the funds the LEA receives under §§ 200.22 through 200.26 for innovation projects to promote quality in the Chapter 1 LEA Program.

(2) Innovation projects may include only the following:

(i) Notwithstanding § 200.31(a), the continuation of services to children who received Chapter 1 services in any preceding year for a period sufficient to maintain progress made during the period of their participation in the program.

(ii) Notwithstanding § 200.31(c)(1), the provision of continued services, for a period not to exceed two additional years, to children participating in a Chapter 1 project who are transferred to ineligible areas or schools as part of a desegregation plan.

(iii) Incentive payments to schools that have demonstrated significant progress and success in attaining the goals of this part.

(iv) Training of teachers paid with funds under this part and teachers and librarians paid with other funds with respect to the special educational needs of eligible children and integration of activities under this part into regular classroom programs.

(v) Programs to encourage innovative approaches to parental involvement or rewards to or expansion of exemplary parental involvement programs.

(vi) Encouraging the involvement of community and private sector resources (including fiscal resources) in meeting the needs of eligible children.

(vii) Assistance by LEAs of schools identified under § 200.38(b).

(3) Except as provided in paragraph (d)(2) (i)–(ii) of this section, the requirements of this part apply to innovation projects conducted under this section.

(Authority: 20 U.S.C. 2721)

§ 200.5 What regulations apply to the Chapter 1 LEA Program?

The following regulations apply to the Chapter 1 LEA Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 76 (State-Administered Programs) as follows:

(i) Subpart A (General), except for § 76.3 (ED general grant regulations apply to these programs).

(ii) Sections 76.125 through 76.137 (Consolidated Grant Applications for Insular Areas).

(iii) Section 76.401 (Disapproval of an application—opportunity for a hearing).

(iv) Subpart F (What Conditions Must Be Met by the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.580–76.581 (Coordination).

(B) Sections 76.650 through 76.662 (Participation of Students Enrolled in Private Schools).

(C) Section 76.664 (Day care services).

(D) Section 76.690 (Energy conservation awareness).

(v) Subpart G (What Are the Administrative Responsibilities of the State and Its Subgrantees?), except for the following sections:

(A) Sections 76.770 through 76.772 (State Administrative Responsibilities).

(B) Section 76.780 (A State shall adopt complaint procedures).

(C) Section 76.781 (Minimum complaint procedures).

(D) Section 76.782 (An organization or individual may file a complaint).

(vi) Subpart H (What Procedures Does the Secretary Use to Get Compliance?).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 78 (Education Appeal Board).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), unless a State formally adopts its own written fiscal and administrative requirements for expending and accounting for all funds received by SEAs and LEAs under this part. These requirements must be available for Federal inspection and must—

(i) Be sufficiently specific to ensure that funds received under this part are used in compliance with all applicable statutory and regulatory provisions;

(ii) Ensure that funds received under this part are only spent for reasonable and necessary costs of operating programs under this part; and

(iii) Ensure that funds received under this part are not used for general expenses required to carry out other responsibilities of State or local governments.

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(b) The regulations in this Part 200.

(Authority: 20 U.S.C. 2831(a))

§ 200.6 What definitions apply to the Chapter 1 LEA Program?

(a) *Definitions in the Elementary and Secondary Education Act.* The following terms used in this part are defined in section 1471 of the Act:

Average daily attendance
Construction
County
Effective schools programs
Elementary school
Equipment
Free public education
Local educational agency (LEA)
More advanced skills
Parent advisory council
Project area
Pupil services
Pupil services personnel
School facilities
Secondary school
Secretary
State
State educational agency (SEA)

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Acquisition
Application
Department
EDGAR
GEPA
Grant
Minor remodeling
Personal property
Private
Project
Public
Real property
Subgrant
Supplies

(c) *Other definitions.* The following definitions also apply to this part:

"Act" means the Elementary and Secondary Education Act of 1965, as amended (ESEA).

"Aggregate performance" means educational achievement of children participating in programs under this part, aggregated for a school as a whole, measured in accordance with the national evaluation standards in Subpart H.

"Chapter 1" means Chapter 1 of Title I of the Act.

"Children" means persons—

(1) Up to age 21 who are entitled to a free public education through grade 12; or

(2) Who are of preschool age.

"Desired outcomes"—

(1) Means an LEA's goals to improve the educational opportunities of educationally deprived children to help those children—

(i) Succeed in the regular educational program of the LEA;

(ii) Attain grade-level proficiency; and

(iii) Improve achievement in basic and more advanced skills;

(2) At a minimum, must be expressed in terms of aggregate performance in accordance with § 200.38(b)(1)(ii).

(3) May also be expressed in terms of other indicators such as—

(i) Improved student performance measured by criterion-referenced tests;

(ii) Lower dropout rates;

(iii) Improved attendance; and

(iv) Fewer retentions in grades.

"ECIA" means the Education Consolidation and Improvement Act of 1981.

"Educationally deprived children" means children whose educational attainment is below the level that is appropriate for children of their age.

"Fiscal year" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30—or another 12-month period normally used by the SEA for recordkeeping.

"Institution for delinquent children" means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children who have been determined to be delinquent or in need of supervision.

"Institution for neglected children" means, as determined by the SEA, a public or private residential facility—other than a foster home—that is operated primarily for the care of children who have been committed to the institution—or voluntarily placed in the institution under applicable State law—because of the abandonment by, neglect by, or death of parents.

"Parent." (1) The term includes a legal guardian or other person standing in loco parentis.

(2) "In loco parentis" means a person acting in place of a parent or legal guardian, and may include a person such as a grandparent, stepparent, aunt, uncle, older sibling, or other person either—

(i) With whom a child lives; or

(ii) Who has been designated by a parent or legal guardian to act in place of the parent or legal guardian regarding all aspects of the child's education.

"Preschool children" means children who are—

(1) Below the age or grade level at which the LEA provides a free public education; and

(2) Of the age or grade level at which they can benefit from an organized instructional program provided in a school or other educational setting.

"School attendance area." (1) This term means, in relation to a particular public school, the geographic area in which the children who are normally served by that school reside.

(2) If a child's school attendance area cannot be determined on a geographic basis, the child is considered to be in the school attendance area of the school to which the child is assigned or would be assigned if the child were not attending a private school or another public school on a voluntary basis.

(Authority: 20 U.S.C. 2831(a), 2891)

§§ 200.7-200.9 [Reserved]

Subpart B—How Does a State Apply for and Receive a Grant?

§ 200.10 What assurances must a State submit to receive a grant?

(a) A State that wishes to receive funds under this part for projects designed to meet the special educational needs of educationally deprived children shall submit to the Secretary, through its SEA, assurances that the SEA—

(1) Will meet the requirements in section 435(b) (2) and (5) of the General Education Provisions Act (GEPA) relating to fiscal control and fund accounting procedures;

(2) Will carry out the activities in § 200.35 (evaluation) and §§ 200.37-200.38 (school program improvement);

(3) Has on file a program improvement plan that meets the requirements of § 200.37(a); and

(4) Will ensure that its LEAs comply with all applicable statutory and regulatory requirements.

(b) The assurances submitted under paragraph (a) of this section remain in effect for the duration of the SEA's participation in the Chapter 1 LEA Program.

(Authority: 20 U.S.C. 2722(a))

§§ 200.11-200.19 [Reserved]

Subpart C—How Does an LEA Apply for and Receive a Subgrant?

§ 200.20 How does an LEA apply for a subgrant?

(a) *Contents of an application.* An LEA may receive a subgrant under this part for any fiscal year if the LEA has on file with the SEA an application that contains the following:

(1) A description of the procedures to be used to conduct an annual assessment of educational needs that meets the requirements of § 200.31(b).

(2) A rank ordering of eligible school attendance areas, including the identification of project areas and the basis for the selection of each project area.

(3) A description of the Chapter 1 project to be conducted, including a budget of proposed expenditures for services to public and private school children for the initial project year.

(4) A description of—

(i) The desired outcomes for children participating in the Chapter 1 project, in terms of basic and more advanced skills that all children are expected to master, that will be a basis for evaluating the project under § 200.35; and

(ii) How the LEA will measure substantial progress toward meeting the desired outcomes.

(5) A description of the services to be provided to—

(i) Eligible children enrolled in private elementary and secondary schools to ensure equitable participation of those children in accordance with §§ 200.50-200.55; and

(ii) Children in local institutions for neglected or delinquent children, including children in local correctional institutions.

(6) A description of any innovation projects the LEA proposes to conduct.

(7) Data showing that the LEA has maintained fiscal effort in accordance with § 200.41 if those data are not otherwise available to the SEA.

(8) If appropriate, the assurance concerning comparability of services in § 200.43(c)(1)(i).

(9) The assurances required under section 436(b) (2) and (3) of GEPA relating to fiscal control and fund accounting procedures.

(10)(i) Assurances that the LEA's Chapter 1 projects—

(A) Are of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served;

(B) Are designed and implemented in consultation with teachers (including early childhood professionals, pupil services personnel, and librarians, if appropriate);

(C) Provide for parental involvement in accordance with § 200.34;

(D) Provide for the allocation of time and resources for frequent and regular coordination between Chapter 1 staff and the regular staff to ensure that both the Chapter 1 and regular instructional programs meet the special educational needs of children participating in programs under this part; and

(E) Provide maximum coordination between Chapter 1 services and services provided to address children's handicapping conditions or limited English proficiency; and

(ii) With the least possible paperwork and burden, additional information an SEA finds necessary to ensure compliance with these assurances.

(b) *Development and approval of application An application must be*—

(1) Developed in consultation with parents and teachers; and

(2) Approved by the SEA under § 200.21.

(c) *Frequency of submission.* (1) An LEA shall submit to the SEA an application prior to each project period.

(2) A project period may cover a period of not more than three years.

(d) *Annual updating of information in the application.* An LEA shall annually update its application by submitting to the SEA—

(1) Information on eligible school attendance areas and the selection of project areas required in paragraph (a)(2) of this section;

(2) Data showing that the LEA has maintained fiscal effort in accordance with § 200.41 if those data are not otherwise available to the SEA; and

(3) A budget of proposed expenditures for services to public and private school children under this part for the project year.

(e) *Further updating of information in the application.* If there are substantial changes in the number or needs of the children to be served or the services to be provided, an LEA shall submit a description of the changes to the SEA.

(Authority: 20 U.S.C. 2721(b), 2722 (b)-(c), 2723, 2728 (a), (c), 2830(c))

§ 200.21 Under what conditions does an SEA approve an LEA's application?

(a) *Standards for approval.* An SEA shall approve an LEA's application for a subgrant if—

(1) The application meets the requirements in § 200.20; and

(2) The SEA determines that the LEA—

(i) Maintained fiscal effort in accordance with § 200.41; or

(ii) Has modified its application to take into account its reduced allocation if the LEA failed to maintain effort.

(b) *Effect of SEA approval.* SEA approval of an application under paragraph (a) of this section does not relieve the LEA of its responsibility to comply with all applicable requirements.

(Authority: 20 U.S.C. 2722, 2728(a))

Allocation of Basic Grants

§ 200.22 How does an SEA allocate funds for basic grants to an LEA?

(a) If the Secretary determines the amount of funds that each LEA in a State is eligible to receive under section 1005(a)(2)(A) of the Act, an SEA shall allocate that amount to each LEA within the State.

(b) If the Secretary determines county aggregate amounts under section 1005(a)(2)(B) of the Act, the SEA shall allocate those county aggregate amounts to LEAs in accordance with §§ 200.23–200.24.

(Authority: 20 U.S.C. 2711(a))

§ 200.23 How does an SEA allocate county aggregate amounts?

Except as provided in § 200.24, an SEA shall allocate county aggregate amounts to LEAs as follows:

(a) *Allocations based on children in local institutions for neglected or delinquent children.* (1)(i) Except as provided in paragraphs (a)(2), (3), and (4) of this section the SEA shall first allocate to a particular LEA that portion, if any, of the county aggregate amount that is based on the total number of children aged 5 to 17, inclusive, in the LEA's school district who resided in a local institution for neglected or delinquent children—and were not counted under Subpart 3 of Part D of Chapter 1 (programs for neglected or delinquent children operated by State agencies)—for at least 30 consecutive days, at least one day of which was in the month of October of the preceding fiscal year.

(ii) For the purpose of this section, the SEA shall consider children who are in local correctional institutions to be residing in institutions for delinquent children.

(2) If the SEA determines that the LEA is unable or unwilling to provide for the special educational needs of the children referred to in paragraph (a)(1) of this section, the SEA shall—

(i) Reduce the LEA's allocation by the amount that is based on those children, including any concentration grant funds generated by those children; and

(ii) Assign that portion of the LEA's allocation to—

(A) The SEA if the SEA assumes educational responsibility for those children; or

(B) Another State agency or LEA that agrees to assume educational responsibility for those children.

(3) If no public agency is willing to assume educational responsibility for the children referred to in paragraph (a)(1) of this section, the SEA may not reallocate to any other LEA that portion of the LEA's allocation that is based on those children.

(4) If a local institution for neglected or delinquent children closes and the children are transferred to an institution in the school district of another LEA, the SEA shall adjust the allocations of the two LEAs to reflect the transfer.

(b) *Allocations based on the distribution of children from low-income families*—(1) *General rule.* (i) After following the procedures in paragraph (a) of this section, the SEA shall allocate the remaining county aggregate amount of LEAs in the county on the basis of the best available data on the number of children from low-income families in the school districts of those LEAs.

(ii) The SEA shall determine the number of children from low-income families in the school districts of the LEAs in the county by using the same measure of low-income throughout the State.

(iii) In accordance with section 1403(a) of the Act, an LEA's allocation under paragraphs (a) and (b)(1)(i) of this section may not be less than 85 percent of the allocation it received for the previous fiscal year.

(2) *Special circumstances.* The SEA shall adjust the allocations it makes under paragraph (b)(1) of this section to reflect the following special circumstances:

(i) *LEAs in more than one county.* If a school district of an LEA overlaps a county boundary, the SEA shall make, on a proportionate basis, a separate allocation to the LEA from the county aggregate amount for each county in which the school district of the LEA is located provided the aggregate number of children from low-income families in the LEA is 10 or more.

(ii) *LEAs serving children from another LEA.* If an LEA serves a substantial number of children within the same geographic area as another LEA, the SEA may adjust the allocations between the LEAs in a manner the SEA determines will best carry out the purposes of Chapter 1.

(iii) *Changes in LEAs.* If an LEA's school district is merged or consolidated, or a portion of the district is transferred to another LEA, the SEA may—

(A) Adjust the allocations for the affected LEAs to reflect the number of children from low-income families for whom each LEA is providing a free public education; or

(B) Permit an LEA that has submitted an approved application to carry out the project, by itself or in cooperation with another LEA, during the remainder of the fiscal year.

(3) *Minimum allocation.* The SEA is not required to allocate to an LEA a basic grant of funds under this part generated by fewer than 10 children.

(Authority: 20 U.S.C. 2711, 2822–2823)

§ 200.24 Are there exceptions to how an SEA allocates county aggregate amounts?

(a) In any State in which a large number of LEAs overlap county boundaries, the SEA may apply to the Secretary for authority to make allocations directly to LEAs without regard to counties.

(b) If an SEA allocates directly to LEAs under paragraph (a) of this section, the SEA shall use the same factors contained in section 1005(c) of the Act to determine the LEAs' allocations as the Secretary used to compute county aggregate amounts under section 1005(a)(2)(B) of the Act.

(c) An LEA dissatisfied with the determination by the SEA under this section may appeal directly to the Secretary for a final determination.

(Authority: 20 U.S.C. 2711)

Allocation of Concentration Grants

§ 200.25 How does an SEA allocate concentration grants to an LEA?

(a) *General rule.* (1) Except as provided in paragraph (b) of this section, an SEA shall allocate a county's concentration grant funds only to LEAs—

(i) Whose school districts lie, in whole or in part, within the country; and

(ii) That meet the eligibility criteria in § 200.3(c)(1).

(2) In allocating concentration grant funds under paragraph (a) of this section, the SEA shall distribute the funds to each LEA that is eligible to receive those funds in proportion to the current number of children counted for purposes of § 200.23 or § 200.24 in the school district of each LEA compared to the current number of those children in the school districts of all LEAs that are eligible for concentration grants in the county.

(b) *Exceptions.* (1)(i) An SEA may reserve not more than 2 percent of the amount of concentration grant funds it receives to make direct payments to LEAs that meet the criteria in § 200.3(c)(1) (i) and (iii) but are located in counties that are not eligible under § 200.3(c)(1)(ii).

(ii) If an SEA plans to reserve concentration grant funds under paragraph (b)(1)(i) of this section, the SEA, before allocating any concentration grant funds under paragraph (a) or (b) (2)–(3) of this section, shall—

(A) Determine which LEAs located in ineligible counties are eligible to receive concentration grant funds;

(B) Determine the appropriate amount to be reserved;

(C) Proportionately reduce the amount available for concentration grants for eligible counties or LEAs to provide the reserved amount;

(D) Rank order the LEAs eligible for concentration grant funds that are located in ineligible counties according to the number or percentage of children counted for purposes of § 200.23 or § 200.24 in the preceding fiscal year in each LEA;

(E) Select, in rank order, those LEAs that the SEA plans to provide concentration grant funds; and

(F) Distribute the reserved funds among the selected LEAs in proportion to the current number of children counted for purposes of § 200.23 or § 200.24 in the school district of each LEA compared to the current number of those children in all the school districts of the selected LEAs.

(2) In a county in which no LEA meets the eligibility criteria in § 200.3(c)(1)(iii), an SEA shall—

(i) Identify those LEAs in which either the number or percentage of children counted for purposes of § 200.23 or § 200.24 in the preceding fiscal year exceeds the average number or percentage of those children in the county; and

(ii) Allocate concentration grant funds for the county among the LEAs identified in paragraph (b)(2)(i) of this section in proportion to the current number of children counted for proposes of § 200.23 or § 200.24 in the school district of each LEA compared to the current number of those children in all the school districts of those LEAs.

(3) In a State that receives a minimum concentration grant under section 1006(a)(1)(B) of the Act, the SEA shall—

(i) Allocate concentration grant funds among LEAs in the State in accordance with the provisions in paragraphs (a) and (b) of this section; or

(ii) Without regard to the counties in which the LEAs are located—

(A) Identify those LEAs in which either the number or percentage of children counted for purposes of § 200.23 or § 200.24 in the preceding fiscal year exceeds the average number or percentage of those children in the State; and

(B) Allocate concentration grant funds among the LEAs identified in paragraph (b)(3)(ii)(A) of this section in proportion to the current number of children counted for purposes of § 200.23 or § 200.24 in the school district of each LEA compared to the current number of those children in all the school districts of all LEAs so identified.

(c) *Use of concentration grant funds.* (1) An LEA that receives concentration grant funds under this section shall use those funds to carry out activities described in its approved project aplication under § 200.20.

(2) The LEA is not required to account for concentration grant funds separately from basic grant funds.

(Authority: 20 U.S.C. 2712)

Reallocation

§ 200.26 How does an SEA reallocate funds?

(a) An SEA shall reallocate, on a timely basis, excess Chapter 1 funds provided under §§ 200.22–200.25—

(1) From an LEA that—

(i) Is not participating in the Chapter 1 LEA Program;

(ii) Has had its allocation reduced because it failed to meet the maintenance of effort requirements in § 200.41;

(iii) Has carryover funds that exceed the percentage limitation in § 200.46; or

(iv) Has excess funds for other reasons; or

(2) That the SEA has recovered after determining that an LEA has failed to spend funds received under this part in accordance with applicable law.

(b)(1) An SEA may reallocate excess Chapter 1 funds referred to in paragraph (a) of this section only to LEAs with the greatest need for those funds because of inequities in, or mitigating hardships caused by, application of the allocation formula in section 1005 of the Act.

(2) Factors that may cause inequities in the formula include—

(i) An increase since the most recent decennial census, caused by population shifts or changing economic conditions, in the number of children from low-income families.

(ii) Caseload data used in the allocation formula that are not representative of the number of neglected or delinquent children in local institutions; and

(iii) Other circumstances in which the statutory formula fails to reflect accurately the number or percentage of low-income children.

(c) The SEA shall develop procedures for reallocating excess Chapter 1 funds provided under §§ 200.22–200.25 that include the following three steps:

(1) A determination of which LEAs are eligible to receive additional funds as indicated by the presence of factors such as those in paragraph (b)(2) of this section. An LEA's eligibility must be based on inequity caused by the allocation formula.

(2) From among the eligible LEAs, a determination of which LEAs have the greatest need for funds. The SEA may consider such factors as—

(i) The degree of increase in the number or percentage of children from low-income families; and

(ii) An LEA's need for additional funds to provide Chapter 1 services to address the unmet needs of eligible Chapter 1 children.

(3) An establishment of timelines for reallocation.

(d)(1) An SEA may reallocate excess funds only during the Federal fiscal year for which the funds were appropriated or during the succeeding Federal fiscal year.

(2) Reallocation does not extend the period during which the excess funds are available for obligation.

(Authority: 20 U.S.C. 1225(b), 2823(b), 2832(b))

§§ 200.27–200.29 [Reserved]

Subpart D—What Project Requirements Apply to the Chapter 1 LEA Program?

§ 200.30 How does an LEA select school attendance areas to be project areas?

(a) *General rule.* (1) Except as provided in paragraphs (b) and (d) of this section, an LEA that receives Chapter 1 funds under this part shall conduct Chapter 1 projects in school attendance areas that have high concentrations of children from low-income families.

(2)(i) An LEA shall identify a school attendance area with a high concentration of children from low-income families as an eligible school attendance area if—

(A) The percentage of children from low-income families in that school attendance area is at least as high as the percentage of children from low-income families in the LEA as a whole; or

(B) The number of children from low-income families in that school attendance area is at least equal to the average number of children from low-income families per school attendance area in the LEA as a whole.

(ii) In identifying eligible areas, the LEA may use a combination of the methods in paragraph (a)(2)(i) of this section, except that the total number of eligible school attendance areas may not exceed the number the LEA would have identified as eligible if it had used only one of the methods.

(iii) If an LEA ranks its school attendance areas by grade span groupings under paragraph (a)(3)(i)(A) of this section, the LEA shall determine the percentage or average number of children from low-income families in the LEA as a whole for each grade span grouping.

(3) If fund available under this part are insufficient to provide programs and projects for all educationally deprived

children in eligible school attendance areas, an LEA shall—

(i) Annually rank its eligible school attendance areas from highest to lowest according to relative degree of concentration of children from low-income families. The LEA may rank its school attendance areas—

(A) By grade span groupings; or

(B) For the entire LEA; and

(ii) Based on the needs of educationally deprived children identified under § 200.31(b) and the resources necessary to meet those needs, determine in rank order the number of eligible school attendance areas to be served.

(4) An LEA may carry out a Chapter 1 program or project in an eligible school attendance area only if it carries out a Chapter 1 program or project in all other eligible school attendance areas that are ranked higher under paragraph (a)(3) of this section.

(b) *Special rules.* Notwithstanding paragraph (a) of this section, an LEA may identify and rank eligible school attendance areas as follows:

(1) An LEA may designate as eligible and serve all school attendance areas within a grade span grouping or in the entire LEA if the percentage of children from low-income families in each school attendance area is not more than five percentage points above or five percentage points below the average percentage of children from low-income families within a grade span grouping or within the entire LEA.

(2)(i) If the expenditure requirements in paragraph (b)(2)(ii) of this section are met, an LEA may designate as eligible any school attendance areas in which at least 25 percent of the children are from low-income families.

(ii)(A) Except as provided in paragraph (b)(2)(ii)(B) of this section, an LEA may use the provision in paragraph (b)(2)(i) of this section only if, in each school attendance area of the LEA in which Chapter 1 projects were carried out during the preceding year, the aggregate per pupil expenditures of funds available under this part are funds from a State program that meets the requirements of section 1018(d)(1)(B) of the Act in the current fiscal year equal or exceed the aggregate per pupil expenditures from those sources in the preceding fiscal year, provided that each school attendance area qualifies for the amount under the requirements in § 200.33.

(B) An LEA may expend in the current fiscal year in particular school attendance areas less than the aggregate per pupil amount required under paragraph (b)(2)(ii)(A) of this section if the LEA determines under § 200.33 that fewer resources are needed to meet the needs of children selected for participation in those attendance areas.

(3)(i) An LEA may designate a school that serves an ineligible school attendance area or serves more than one school attendance area as an eligible school if the proportion of children from low-income families in average daily attendance in that school is substantially equal to the proportion of children from low-income families in an eligible school attendance area.

(ii) If an LEA designates a school as eligible under paragraph (b)(3)(i) of this section, the LEA shall—

(A) Determine that the school complies with the school attendance area requirements in paragraph (a) of this section; and

(B) At its discretion, apply the special rules for identifying and ranking eligible school attendance areas in paragraph (b) of this section to the school.

(4) With the approval of the SEA, an LEA may designate as eligible and serve a school attendance area with a substantially higher number or percentage of educationally deprived children before school attendance areas with higher concentrations of children from low-income families if—

(i) The LEA does not serve more school attendance areas than could otherwise be served; and

(ii) The SEA determines that the selection of school attendance areas under paragraph (b)(4) of this section will not substantially impair the delivery of services to educationally deprived children from low-income families in project areas served by the LEA.

(5)(i) An LEA may continue to provide for one year Chapter 1 services in a school attendance area that is not eligible or is eligible but not selected under paragraph (a) of this section if that school attendance area was eligible and selected under the standards in paragraph (a) of this section in the immediately preceding year.

(ii) A school attendance area that continues to be served under paragraph (b)(5)(i) of this section may take the place of the lowest ranked but otherwise eligible school attendance area.

(6) With the approval of the SEA, an LEA may skip eligible school attendance areas that have higher proportions or numbers of children from low-income families if the children in those attendance areas are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under Chapter 1, except that the LEA shall—

(i) Determine the number of children in private elementary and secondary schools to receive Chapter 1 services without regard to non-Federal compensatory education funds used to serve eligible children in public elementary and secondary schools; and

(ii) Identify children in private schools to receive Chapter 1 services in accordance with the requirements in paragraphs (a) and (b) (1)–(5) of this section.

(c) For purposes of paragraphs (a) and (b) of this section, an LEA, on the basis of the best available data on children from low-income families, shall annually select and use the same measure of low income—which may be a composite of several indicators—to identify and rank eligible school attendance areas within a grade span grouping or for the entire LEA.

(d) *Exemptions.* An LEA does not have to comply with the requirements in this section but shall comply with the requirements in § 200.31 if the LEA has—

(1) A total enrollment of fewer than 1,000 children; or

(2) No more than one school attendance area at each grade span.

(Authority: 20 U.S.C. 2723 (a)–(b))

§ 200.31 How does an LEA identify and select children to participate?

(a) *General rule.* Except as provided in paragraph (c) of this section and § 200.36, an LEA shall use funds available under this part only for educationally deprived children, identified under paragraph (b) of this section as having the greatest need for special assistance, in school attendance areas or schools selected under § 200.30.

(b) *Annual assessment of educational needs.* An LEA that receives funds under this part shall annually assess educational needs under this part as follows:

(1) Identify educationally deprived children, as defined in § 200.6(c), in all eligible school attendance areas, including educationally deprived children in private schools.

(2) On the basis of information obtained under paragraph (b)(1) of this section, including information concerning educationally deprived children in private schools, identify the general instructional areas and grade levels on which the program will focus. Instructional areas and grade levels may vary among and within school attendance areas if the needs assessment data support those variations.

(3) Establish educationally related objective criteria, which include written or oral testing instruments, for each grade level and instructional area to select educationally deprived children

for participation in the Chapter 1 project.

(4) Uniformly apply the criteria required in paragraph (b)(3) of this section to particular grade levels throughout the LEA.

(5) Select for services those educationally deprived children who have the greatest need for special assistance.

(6) Determine—

(i) The special educational needs of participating children with sufficient specificity to ensure concentration on those needs; and

(ii) The resources such as personnel, instructional materials, and library resources necessary to meet those special educational needs.

(c) *Special rules.* In selecting children to participate in Chapter 1, an LEA may implement the following provisions:

(1) An LEA may use funds available under this part during the current school year to continue to serve educationally deprived children who begin participation in a Chapter 1 project but who, in the same school year, are transferred to a school attendance area or a school not receiving funds under this part.

(2) An LEA may skip educationally deprived children in greatest need of special assistance if those children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under Chapter 1.

(3) An LEA may use funds available under this part to serve, for a maximum of two additional years, children who were identified in the previous year as being in greatest need for special assistance and who continue to be educationally deprived but are no longer in greatest need of special assistance.

(4) An LEA shall consider as eligible and may serve children who, at any time in the previous two years, received services under the Chapter 1 Program for Neglected or Delinquent Children.

(5)(i) An LEA may identify as eligible and serve under this part children receiving services to overcome handicapping conditions or limited English proficiency if these children—

(A) Have needs stemming from educational deprivation and not needs related solely to their handicapping conditions or limited English proficiency; and

(B) Are selected on the same basis as other children identified as eligible for and selected to receive services under paragraph (b) of this section.

(ii) In identifying and selecting limited English proficient children for participation in the Chapter 1 LEA Program, an LEA shall—

(A) For children with sufficient English language proficiency, use tests written in the English language, with or without bilingual assistance; or

(B) For children whose lack of English language proficiency precludes valid assessment in the English language, use factors such as teacher evaluation of student performance, language dominance tests in combination with other measures, or other indicators that may be used separately, as a composite score, or as a composite with weighting, to select children on a basis other than English language deficiency.

(iii) An LEA may not use funds available under this part to provide services that are required by Federal, State, or local law to overcome children's handicapping conditions or limited English proficiency.

(Authority: 20 U.S.C. 2724)

§ 200.32 What are the size, scope, and quality requirements of a project?

An LEA shall use funds available under this part for a project that is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the children being served.

(Authority: 20 U.S.C. 2722(c)(1))

§ 200.33 How does an LEA allocate resources to project areas and schools?

(a) Except as provided in paragraph (b) of this section, an LEA shall allocate resources available under this part among project areas and schools on the basis of—

(1) The number and needs of children selected for participation under § 200.31;

(2) The degree of educational deprivation of these children; and

(3) The services to be provided.

(b) For the sole purpose of allocating resources available under this part among project areas and schools under paragraph (a) of this section, an LEA may continue to count, for two additional years, children in those areas and schools who—

(1) Received Chapter 1 services in the preceding school year; but

(2) Are no longer eligible for services because of improved academic achievement attributable to the Chapter 1 services.

(Authority: 20 U.S.C. 2723(c))

§ 200.34 How does an LEA involve parents?

(a) *General rule.* (1) An LEA may receive funds under this part only if it implements programs, activities, and procedures for the involvement of parents of participating public and private school children. This involvement must include, but is not limited to, parent input into the planning, design, and implementation of the Chapter 1 LEA Program.

(2)(i) The activities and procedures required under paragraph (a)(1) of this section must be planned and implemented with the meaningful consultation of parents of participating children.

(ii) The consultation required in paragraph (a)(2)(i) of this section and in other sections in this part must be organized, systematic, ongoing, informed, and timely in relation to decisions about the program.

(3) The activities and procedures for the involvement of parents must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward achieving the goals under paragraph (b) of this section.

(b) *Goals of parental involvement.* To meet the requirements in paragraph (a) of this section, an LEA shall, in coordination with parents of participating children, develop programs, activities, and procedures that have the following goals:

(1) To inform parents of participating children of the—

(i) Reasons their children are participating in the program; and

(ii) Specific instructional objectives and methods of the program.

(2) To support the efforts of parents, including training parents, to the maximum extent practicable, to—

(i) Work with their children in the home to attain the instructional objectives of the program; and

(ii) Understand the program requirements.

(3) To train parents, teachers, and principals to build a partnership between home and school.

(4) To train teachers, principals, and other staff members involved in the Chapter 1 LEA Program to work effectively with the parents of participating children.

(5) To consult with parents, on an ongoing basis, concerning the manner in which the school and parents can work better together to achieve the program's objectives.

(6) To provide a comprehensive range of opportunities for parents to become informed, in a timely way, about how the program will be designed, operated, and evaluated, allowing opportunities for parental participation, so that parents and educators can work together to achieve the program's objectives.

(7) To ensure opportunities, to the extent practicable, for the full participation of parents who lack

literacy skills or whose native language is not English.

(c) *Specific requirements.* An LEA shall implement the following activities:

(1)(i) Develop written policies, after consultation with and review by parents, to ensure that parents are involved in the planning, design, and implementation of the Chapter 1 LEA Program. The written policies must provide for timely response to recommendations by parents.

(ii) Make the policies available to parents of participating children.

(2) Convene an annual meeting, to which all parents of participating children must be invited, to explain the programs and activities provided with funds available under this part. The annual meeting may be districtwide or at the building level so long as all parents of participating children are provided the opportunity to attend.

(3)(i) Provide parents of participating children with reports on their children's progress.

(ii) To the extent practical, conduct a parent-teacher conference with the parents of each participating child to discuss the child's progress, placement, and methods the parents can use to complement the child's instruction.

(iii) Make education personnel under the Chapter 1 LEA Program, including pupil services personnel, readily accessible to parents.

(iv) Permit parents of participating children to observe Chapter 1 LEA Program activities.

(4) Provide opportunities for regular meetings of parents to formulate parental input into the program, if parents of participating children so desire.

(5) Provide parents of participating children with timely information about the program.

(6) Make parents aware of parental involvement requirements and other relevant provisions of the program.

(7) Provide reasonable support for parental involvement activities as parents may request.

(8) Coordinate, to the extent possible, parental involvement activities with programs funded under the Adult Education Act.

(9) To the extent practicable, provide information, programs, and activities for parents under this section in a language and form that the parents understand.

(d) *Assessment of the parental involvement program.* An LEA shall annually assess, through consultation with parents, the effectiveness of the parental involvement program and determine what action needs to be taken, if any, to increase parental participation.

(e) *Allowable activities and costs.* Chapter 1 activities that an LEA may support with funds available under this part to meet the requirements of this section include the following:

(1) Regular parent conferences.

(2) Parent resource centers.

(3) Parent training programs, including reasonable and necessary expenditures associated with parents' attendance at training sessions.

(4) Hiring, training, and utilization of parent involvement liaison workers.

(5) Reporting to parents on children's progress.

(6) Training and support of personnel, including pupil services personnel, to work with parents, coordinate parent activities, and make home contacts.

(7) Use of parents as classroom volunteers, tutors, and aides.

(8) Provision of school-to-home complementary curriculum and materials.

(9) Provision of assistance in implementing home-based education activities that reinforce classroom instruction and student motivation.

(10) Provision of timely information on the Chapter 1 LEA Program, including program plans and evaluations.

(11) Solicitation of parents' suggestions in the planning, development, and operation of the program.

(12) Provision of timely responses to parent recommendations.

(13) Parent advisory councils.

(14) Other activities designed to enlist the support and participation of parents in the instruction of their children.

(Authority: 20 U.S.C. 2728, 2731(a)(4))

§ 200.35 What are the requirements for evaluating and reporting project results?

(a) *LEA evaluations.* (1)(i) An LEA shall evaluate, at least once every three years, the effectiveness of its Chapter 1 projects, in terms of basic and more advanced skills that all children are expected to master, on the basis of—

(A) The desired outcomes described in the LEA's application; and

(B) Except for Chapter 1 children in preschool, kindergarten, and first grade, student achievement, aggregated for the LEA as a whole, in accordance with the national standards in Subpart H.

(ii) In accordance with § 200.1(b)(1) (statement of purpose) and § 200.20(a)(10)(i)(D) (coordination with the regular program), the LEA shall include in its evaluation a review of Chapter 1 participating children's progress in the regular program of the LEA. This review may be based on teacher judgments, grades, retention rates, and other appropriate indicators of success.

(2)(i) The LEA shall determine whether improved performance of Chapter 1 participating children is sustained over a period of more than 12 months.

(ii) To make this determination, an LEA shall assess performance of the same children for at least two consecutive 12-month periods, provided these children continue to be enrolled in schools of the LEA.

Example: An LEA provides Chapter 1 services during the 1989–90 school year. The LEA measures the gains made by participating children on a springtesting cycle (spring of 1989, 1990). To determine whether improved performance is sustained over a period of more than 12 months, the LEA measures performance again in the spring of 1991.

(3) The LEA shall report its evaluation results to the SEA at least once during each three-year application cycle.

(b) *SEA evaluations.* (1) An SEA shall evaluate, at least every two years, the Chapter 1 programs in the State on the basis of the local evaluations conducted under paragraph (a) of this section and sections 1107, 1202(a)(6), and 1242(d) of the Act.

(2) The SEA shall inform its LEAs, in advance, of the specific data that will be needed and how the data may be collected.

(3) The SEA shall—

(i) By a date established by the Secretary, submit its evaluation to the Secretary; and

(ii) Make public the results of the evaluation.

(c) *Annual performance report.* (1) An SEA shall annually—

(i) Collect data specified in section 1019 of the Act and by the Secretary in the SEA's annual performance report; and

(ii) Submit those data to the Secretary.

(2) An LEA shall provide to the SEA any data needed by the SEA to complete its annual performance report.

(Authority: 20 U.S.C. 1221e–1a, 2701(b), 2722(b), (c)(3), 2729, 2835, 2852)

§ 200.36 What are the requirements for schoolwide projects?

(a) *Eligibility for a schoolwide project.* An LEA may conduct a Chapter 1 project to upgrade the entire educational program in a school if the following requirements are met:

(1) The school serves an eligible attendance area or is an eligible school in accordance with § 200.30.

(2) For the first year of the three-year project period the LEA determines, using the same measure of low income used to identify and rank school attendance areas under § 200.30(c), that at least 75

percent of the children residing in the school attendance area or enrolled in the school are from low-income families.

(3) The LEA develops a plan for the school that—

(i) Meets the requirements in paragraph (b) of this section; and

(ii) Has been approved by the SEA.

(4) The LEA meets the fiscal requirements in paragraph (c) of this section.

(b) *Required plan.* The plan required under paragraph (a)(3) of this section must—

(1) Provide for a comprehensive assessment of the educational needs of all students in the school, particularly the special needs of educationally deprived children;

(2) Establish goals to—

(i) Meet the special needs of all students; and

(ii) Ensure that educationally deprived children are—

(A) Served effectively; and

(B) Demonstrate performance gains that are comparable to the performance gains of other students;

(3) Describe the instructional program, pupil services, and procedures to be used to implement the goals of the schoolwide project;

(4) Describe the specific uses of funds available under this part in the schoolwide project;

(5) If appropriate, describe how the school will move to implement an effective schools program as defined in section 1471 of the Act;

(6) Be developed with the involvement of individuals who will be engaged in carrying out the plan, including—

(i) Parents;

(ii) Teachers;

(iii) Librarians;

(iv) Education aides;

(v) Pupil services personnel;

(vi) Administrators; and

(vii) If the plan relates to a secondary school, students;

(7) Provide for consultation among the individuals listed in paragraph (b)(6) of this section concerning the—

(i) Educational progress of all students in the school; and

(ii) Development and implementation of the accountability measures required in paragraph (f) of this section;

(8) Provide for appropriate training of parents of children to be served, teachers, librarians, and other instructional, administrative, and pupil services personnel to enable these individuals to carry out the plan; and

(9) Include procedures for measuring progress under paragraph (f) of this section and a description of the measures to be used.

(c) *Fiscal requirements.* An LEA that uses funds available under this part to conduct a schoolwide project shall meet the following fiscal requirements:

(1)(i) In an LEA with one or more schoolwide projects and one or more other schools serving project areas, the LEA shall provide for each schoolwide project an amount of funds made available under this part that, for each educationally deprived child, equals or exceeds the amount of funds made available under this part that the LEA provides for each educationally deprived child served in other project schools. In determining the number of educationally deprived children in a schoolwide project, the LEA shall use either of the following:

(A) The number of children in the schoolwide project below the highest ranked child served in other project schools in the LEA.

(B) All children meeting the definition of "educationally deprived children" in § 200.6(c).

(ii) The LEA shall allocate to a schoolwide project an amount of funds made available under this part that is sufficient to ensure that the project is of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the educationally deprived children served.

(2)(i) Except as provided in paragraph (c)(2)(ii) of this section, during each fiscal year in which a schoolwide project is carried out, the LEA shall, in each schoolwide project, spend per child an amount of State and local funds—excluding amounts spent under a compensatory program as defined in § 200.45(a)(1) and special supplementary State and local funds required under Chapter 1 of the ECIA for each child in a schoolwide project who was not educationally deprived—that is at least equal to the amount of State and local funds the LEA spent per child in that school during the preceding fiscal year.

(ii) The LEA shall include for each fiscal year the cost of services for State and local programs under § 200.45(a)(2) only in proportion to the number of children served by these programs in the school in the year for which the determinations are made.

(3) The LEA shall ensure that funds made available under this part for a schoolwide project only supplement, and to the extent practical, increase the level of funds that would, in the absence of funds under this part, be made available from non-Federal sources for the school.

(4) The LEA shall comply with the comparability requirements in § 200.43.

(5) Notwithstanding paragraph (d)(2) of this section, the LEA shall keep records to document the expenditure of funds made available under this part in a schoolwide project.

(d) *Effect of selection for a schoolwide project.* (1) The SEA shall approve the plan of the LEA for a schoolwide project for a period of three years if the plan meets the requirements in paragraphs (b) and (c) of this section.

(2) For each school that has a schoolwide project plan approved by the SEA, the LEA is not required to—

(i) Comply with any Chapter 1 requirements prohibiting the commingling of funds available under this part with funds available for regular programs in order to show that Chapter 1 funds benefit only educationally deprived children;

(ii) Identify particular children as eligible to participate in the schoolwide project, but shall identify educationally deprived children for the purpose of paragraphs (b), (c), and (f) of this section; and

(iii) Demonstrate that the particular services paid for with Chapter 1 funds supplement the services regularly provided in that school.

(e) *Use of funds.* In addition to the activities included in § 200.4, the LEA may use funds made available under this part in schoolwide projects for—

(1) Planning and implementing effective schools programs; and

(2) Other activities to improve the instructional program and pupil services in the school such as—

(i) Reducing class size;

(ii) Training staff and parents; and

(iii) Implementing extended-day programs.

(f) *Accountability requirements.* (1) Except as provided in paragraph (f)(2) of this section, in order to continue a schoolwide project, an LEA must be able to demonstrate after three years for each school participating in a schoolwide project that—

(i) The achievement gains of educationally deprived children in the school exceed the average achievement gains of comparable participating Chapter 1 children in the LEA as a whole; or

(ii) The achievement gains of educationally deprived children in the school exceed the average achievement gains of comparable educationally deprived children in that school in the three fiscal years prior to the start of the schoolwide project.

(2) For a secondary school, if achievement levels over the three-year schoolwide project period as compared with the three-year period immediately

preceding the schoolwide project do not decline, demonstration of lower dropout rates, increased retention rates, or increased graduation rates are acceptable in lieu of increased achievement.

(3) If the SEA determines that a schoolwide project meets the requirements in paragraph (f) (1) or (2) of this section at the end of the three-year period provided in paragraph (d)(1) of this section, the SEA shall allow the LEA to continue the schoolwide project for an additional three years.

(4)(i) For the purpose of paragraph (f) (1) and (2) of this section, the LEA shall annually collect achievement and other assessment data for each school participating in a schoolwide project.

(ii) The LEA shall make the results of the annual collection of achievement and other assessment data available to parents, the public, and the SEA.

(5) The program improvement requirements in §§ 200.37–200.38 apply to schoolwide projects under this section.

(g) *Participation of children enrolled in private schools.* In determining which private school children residing in the school attendance area of a school participating in a schoolwide project are eligible for Chapter 1 services, the LEA shall apply which ever method it selected under paragraph (c)(1)(i) (A) or (B) of this section.

(Authority: 20 U.S.C. 2725, 2728(c), 2730–2731)

§ 200.37 What are an SEA's responsibilities for program improvement?

(a) *SEA program improvement plan.* (1) An SEA shall develop, in consultation with the committee of practitioners under § 200.70(e), a plan to ensure implementation of the provisions of paragraph (b) of this section and § 200.38.

(2) The SEA's plan must contain, but is not limited to, the following:

(i) The objective measures and standards the SEA and LEAs will use to assess aggregate performance and substantial progress toward meeting desired outcomes. The SEA may establish standards to be included in the plan to improve the educational opportunities of educationally deprived children by helping those children succeed in the regular program, attain grade-level proficiency, and improve achievement in basic and more advanced skills.

(ii) The means the SEA will use to develop a joint plan with an LEA that has identified, under § 200.38(b), a school in need of program improvement to attain satisfactory student progress.

(iii) In accordance with § 200.38(b)(6), the timetable for developing and implementing a joint plan with an LEA.

(iv) The program improvement assistance to be provided to a school identified under § 200.38(b)(6), which may include, but is not limited to—

(A) Training and retraining personnel;

(B) Developing curricula that have shown promise in similar schools;

(C) Replicating promising practices in effective schools models;

(D) Improving coordination between programs assisted under Chapter 1 and the regular school program; and

(E) Developing innovative strategies to enhance parental involvement.

(3) The SEA shall—

(i) Disseminate its plan to all LEAs and other State agencies that receive funds under Chapter 1; and

(ii) Make the plan available at the SEA for inspection by the Secretary.

(4) The SEA may amend its plan, if necessary, after consultation with the committee of practitioners.

(b) *SEA assistance to LEAs.* (1)(i) If funds are appropriated for the implementation of school improvement programs under section 1405 of the Act, an SEA shall fully implement the program improvement activities described in this section and § 200.38.

(ii) If funds are not appropriated under section 1405 of the Act, the SEA shall at a minimum—

(A) With the least possible paperwork and burden, follow the progress of any school identified by an LEA under § 200.38(b)(1);

(B) Develop implement with LEAs joint plans for program improvement under § 200.38(b)(6);

(C) Ensure that program improvement assistance is provided to each school identified under § 200.38(b)(6); and

(D) Conduct other program improvement activities to the extent practicable.

(2) An LEA may apply to the SEA for program improvement assistance funds appropriated under section 1405 of the Act.

(Authority: 20 U.S.C. 2730, 2731 (c)–(d), (g)–(i), 2823, 2851(b)).

§ 200.38 What are an LEA's responsibilities for program involvement?

(a) *Local review.* For each project school, an LEA shall—

(1)(i) Conduct an annual review of the effectiveness of its Chapter 1 project in improving student performance as measured by aggregate performance and the desired outcomes described in the LEA's application; and

(ii) Make the results of the review available to teachers, parents of participating children, and other appropriate parties, including principals of schools attended by Chapter 1 children;

(2) Determine whether improved performance is sustained over a period of more than 12 months as required by § 200.38(b)(6)(iv)(C); and

(3) Use the results of the review and the LEA's evaluation under section 1019 of the Act in program improvement efforts required by paragraph (b) of this section.

(b) *School program improvement.* (1) Except as provided in paragraph (b)(4) of this section, an LEA shall implement the requirements in paragraph (b)(2) of this section with respect to each school that—

(i) Does not show substantial progress toward meeting the desired outcomes described in the LEA's application; or

(ii)(A) Shows no improvement or a decline in aggregate performance of participating children for a 12-month period. No improvement or a decline in aggregate performance occurs if participating children, in the aggregate, in the school fail to make gains beyond that which they would be expected to make in the absence of the additional help the program provided.

(B)(*1*) Unless the conditions in paragraph (b)(1)(ii)(B)(*2*) of this section exist, the LEA is only required to determine the aggregate performance of a school in the instructional area that is the primary focus of the Chapter 1 LEA Program in that school.

(*2*) If the Chapter 1 LEA Program in that school addresses two or more instructional areas with relatively equal emphasis, the LEA shall determine aggregate performance in each area.

(2) For each school identified under paragraph (b)(1) of this section, the LEA shall develop and implement, in coordination with the school, a plan for program improvement that—

(i) Describes how the LEA will identify and modify Chapter 1 programs for each school and its participating children under this section;

(ii) Incorporates those program changes that have the greatest likelihood of improving the performance of educationally deprived children, including—

(A) A description of educational strategies designed to achieve the LEA's desired outcomes or otherwise to improve the performance and meet the needs of participating children;

(B) A description of the resources, and how those resources will be applied, to carry out the strategies selected, including, as appropriate—

(*1*) Qualified personnel;

(*2*) Inservice training;

(*3*) Curriculum materials;

(*4*) Equipment;

(*5*) Physical facilities;

(*6*) Technical assistance;

(*7*) Alternative curriculum that has shown promise in similar schools;

(*8*) Improving coordination between the Chapter 1 LEA Program and the regular school program;

(*9*) Evaluation of parental involvement;

(*10*) Appropriate inservice training for Chapter 1 staff and other staff who teach participating children; and

(*11*) Other measures selected by the LEA.

(3) The LEA shall—

(i) Submit the plan to the local school board and the SEA; and

(ii) Make the plan available to parents of participating children in the school.

(4) The LEA is not required to—

(i) Develop a school improvement plan for a school that served 10 or fewer children for the entire school year; or

(ii) Complete and implement a school improvement plan under development if data become available during plan development or prior to plan implementation that demonstrate that there has been a gain in aggregate performance and that substantial progress has been made toward meeting the desired outcomes.

(5)(i) The LEA shall develop a timeline for implementation of each school's plan, taking into consideration the degree of change needed, the nature of the changes, and other relevant factors.

(ii)(A) The plan must be fully implemented as soon as possible but no later than the beginning of the second school year after the school year during which the school did not show substantial progress toward meeting the LEA's desired outcomes or showed no improvement or a decline in aggregate performance of participating children.

(B) If full implementation of the plan requires the maximum time allowed under paragraph (b)(5)(ii)(A) of this section, the LEA shall implement portions of the plan as soon as possible

Example: An LEA determines that a school, during the 1988–89 school year, has shown a decline in aggregate performance. The LEA must develop and fully implement a school improvement plan in that school as soon as possible but not later than September 1990. For example, if the necessary changes can be accomplished quickly, such as purchasing readily available materials or equipment, the LEA would be able to implement its plan by September 1989. On the other hand, if the needed changes require a complete redesign of the LEA's project, the LEA might not be able to implement the plan fully before September 1990. In this case, the LEA must implement portions of the plan as soon as possible. For example, the LEA develops and implements a staff training program during the 1989–90 school year in preparation for full implementation of the plan in September 1990.

(6)(i) If, after the LEA's plan has been in effect for one full school year, the school is still identified as needing improvement under paragraph (b)(1) of this section, the LEA shall, with the SEA, develop and implement a joint plan for program improvement in the school.

(ii) The joint plan must—

(A) Be developed and implemented in consultation with school staff and parents of participating children; and

(B) Be approved by both the SEA and LEA before the plan may be implemented.

(iii)(A) The joint plan must be fully implemented as soon as possible but no later than the beginning of the second school year after the full school year during which the LEA's plan under paragraph (b)(2)–(5) of this section was in effect.

(B) If full implementation of the joint plan requires the maximum time allowed under paragraph (b)(6)(iii)(A) of this section, the SEA and LEA shall implement portions of the plan as soon as possible.

(iv) If the SEA finds that, after the joint plan has been in effect for one full school year, a school continues to need improvement under paragraph (b)(1) of this section, the SEA, with the LEA, shall—

(A) Review the plan;

(B) Make revisions that are designed to improve performance; and

(C) Continue to review and revise the joint plan each consecutive year until improved performance is sustained over a period of more than 12 months.

(v) Nothing in this section or § 200.37 shall be construed to give the SEA any authority concerning the educational program of an LEA that does not otherwise exist under State law.

Example: Both the LEA and SEA should follow the progress of the LEA's school improvement plan during the first full school year of implementation. In the example following paragraph (b)(5) of this section, if a plan is implemented by September 1989, school year 1989–90 would be the first full school year. If after one full year of implementation (school year 1989–90), the LEA determines that the school still has not improved, the LEA must develop and fully implement a joint program improvement plan with the SEA before the beginning of the second school year following the full school year the LEA's plan was in effect. Thus, in this example, the joint plan would have to be developed and fully implemented by the beginning of the 1991–92 school year. If the maximum time is needed, portions of the joint plan must be implemented as soon as possible. For example, if full implementation cannot be accomplished until the beginning of the 1991–92 school year, the LEA might be required to implement a staff training program during the 1990–91 school year in preparation for full implementation of the joint plan in school year 1991–92.

For an LEA that is unable to implement fully the school improvement plan until Septembr 1990, school year 1990–91 would be the first full school year. If after one full year of implementation (school year 1990–91), the LEA determines that the school still has not improved, the LEA must develop and fully implement a joint program improvement plan with the SEA before the beginning of the second school year following the full school year the LEA's plan was in effect. Thus in this example, the joint plan would have to be developed and fully implemented by the beginning of the 1992–93 school year. If the maximum time is needed, portions of the joint plan must be implemented as soon as possible. For example, if full implementation cannot be accomplished until the beginning of the 1992–93 school year, the LEA might be required to implement a staff training program during the 1991–92 school year in preparation for full implementation of the joint plan in school year 1992–93.

(c) *Local conditions.* (1) The LEA and the SEA, in performing their responsibilities under this section, shall take into consideration—

(i) The mobility of the student population;

(ii) The extent of educational deprivation among participating children that may negatively affect improvement efforts;

(iii) The difficulties involved in dealing with older children in Chapter 1 programs in secondary schools;

(iv) Whether indicators other than improved achievement demonstrate the positive effects on participating children of Chapter 1 activities; and

(v) Whether a change in the review cycle under section 1019 of the Act or paragraph (a)(1) of this section or in the measurement instrument used or other measure-related phenomena has rendered results invalid or unreliable for a particular year.

(2) The local conditions in paragraph (c)(1) of this section may be considered, as appropriate, at any point in the program improvement process, including the following:

(i) Determining the extent of services needed to meet desired outcomes in the LEA's application.

(ii) Allocating resources to schools.

(iii) Determining how substantial progress toward meeting desired outcomes will be measured.

(iv) Identifying a school in need of program improvement under paragraph (b)(1) of this section.

(v) Identifying a school that continues to need program improvement under paragraph (b)(6) of this section.

(d) *Student program improvement.* On the basis of the evaluation under section 1019 of the Act and local reviews under paragraph (a) of this section, an LEA shall—

(1) Identify all students who have been served for a school year and—

(i) Have not shown substantial progress toward meeting the desired outcomes established for participating children under § 200.20(a)(4); or

(ii) Whose performance show no improvement or a decline;

(2) Consider modifications in the LEA's Chapter 1 project to serve those students better;

(3) Conduct a thorough assessment of the educational needs of children who remain in the LEA's Chapter 1 project after two consecutive years of participation and—

(i) Have not shown substantial progress toward meeting the desired outcomes established for participating children under § 200.20(a)(4); or

(ii) Whose performance shows no improvement or a decline; and

(4) If appropriate, use the results of that needs assessment to modify the Chapter 1 project to meet the children's needs.

(e) *Private school children.* Program improvement and student improvement activities under this section must include participating children in private schools in accordance with section 1017 of the Act.

(f) *Effective date.* An LEA shall begin identifying schools and students in need of program improvement based on information gathered before or during the 1988–89 school year.

(g) *Technical assistance centers.* In carrying out the program improvement and student improvement activities under this section, an LEA and SEA shall utilize the resources of the regional technical assistance centers and appropriate regional rural assistance programs established under section 1456 of the Act to the full extent those resources are available.

(Authority: 20 U.S.C. 2731)

§ 200.39 How many personnel be assigned non-Chapter 1 duties?

(a) An LEA may assign public school personnel paid entirely with funds available under this part to limited supervisory duties that may provide some benefit to children not participating in the Chapter 1 project if—

(1) Similary situated personnel at the same school site, who are not paid with funds available under this part, are assigned these duties; and

(2) The time spent by Chapter 1 personnel on these duties does not exceed the least of the following:

(i) The proportion of total work time that similary situated non-Chapter 1 personnel at the same school site spend performing these duties.

(ii) One period per day.

(iii) Sixty minutes per day.

(b) The amount of time referred to in paragraph (a)(2) of this section may be calculated on a daily, weekly, monthly, or annual basis.

(c) The duties in paragraph (a) of this section need not be limited to classroom instruction and may include, but are not limited to, the following:

(1) Supervision of halls, playgrounds, lunchrooms, study halls, bus loading and unloading, and homerooms.

(2) Participation as a member of a school or district curriculum committee.

(3) Participation in the selection of regular curriculum materials and supplies.

(Authority: 20 U.S.C. 2853(a))

Subpart E—What Fiscal Requirements Apply to the Chapter 1 LEA Program?

§ 200.40 What is the prohibition against using funds under this part to provide general aid?

An LEA may use funds available under this part only for projects that are designed and implemented to meet the special educational needs of educationally deprived children who are—

(a) Identified and selected in accordance with § 200.31; and

(b) Included in the LEA's application that has been approved by the SEA.

(Authority: 20 U.S.C. 2721(a), 2722(b), 2724)

§ 200.41 What maintenance of effort requirements apply to this program?

(a) (1) *Basic standard.* Except as provided in § 200.42, and LEA may receive its full allocation of funds under this part if the SEA finds that either the combined fiscal effort per student or the aggregate expenditures of State and local funds with respect to the provision of free public eduction in the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or the aggregate expenditures for the second preceding fiscal year.

(2) *Meaning of "preceding fiscal year."* For purposes of determining maintenance of effort, the "proceding fiscal year" is the Federal fiscal year or the 12-month fiscal period most commonly used in a State for official reporting purposes prior to the beginning of the Federal fiscal year in which funds are available.

Example: For funds first made available on July 1, 1989, if a State is using the Federal fiscal year, the "preceding fiscal year" is Federal fiscal year 1988 (which began on October 1, 1987) and the "second preceding fiscal year" is Federal fiscal year 1987 (which began on October 1, 1986). If a State is using a fiscal year that begins on July 1, 1989, the "preceding fiscal year" is the 12-month period ending on June 30, 1988 and the "second preceding fiscal year" is the period ending on June 30, 1987.

(3) *Expenditures*—(i) *To be considered.* In determining an LEA's compliance with the maintenance of effort requirement, the SEA shall consider the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance, health services, pupil transportation, plant operation and maintenance, fixed charges, and net expenditures to cover deficits for food services and student body activities.

(ii) *Not to be considered.* The SEA shall not consider the following expenditures in determining an LEA's compliance with the maintenance of effort requirement:

(A) Any expenditures for community services, capital outlay, or debt service.

(B) Any expenditures made from funds provided under Chapter 1 and Chapter 2 of Title I of the Act or Chapter 1 and Chapter 2 of the ECIA.

(b) *Failure to maintain effort.* (1) If an LEA fails to maintain effort and a waiver under § 200.42 is not granted, the SEA shall reduce the LEA's allocation of funds under this part in the exact proportion by which the LEA fails to meet 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA) for the second preceding fiscal year.

(2) In detemining maintenance of effort for the fiscal year immediately following the fiscal year in which the LEA failed to maintain effort, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, an LEA fails to maintain effort because its fiscal effort in the preceding fiscal year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987). In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year that caused the LEA's failure to maintain effort) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a)(1), (2))

§ 200.42 Under what circumstances may an SEA waive the maintenance of effort requirement?

(a) (1) An SEA may waive, for one fiscal year only, the maintenance of effort requirement in § 200.41 if the SEA determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include but are not limited to the following:

(i) A natural disaster.

(ii) A precipitous and unforeseen decline in the financial resources of the LEA.

(2) An SEA may not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(b) (1) If the SEA grants a waiver under paragraph (a) of this section, the SEA shall not reduce the amount of funds available under this part the LEA is otherwise entitled to receive.

(2) In determining maintenance of effort for the fiscal year immediately following the fiscal year for which the waiver was granted, the SEA shall consider the LEA's fiscal effort for the second preceding fiscal year to be no less than 90 percent of the combined fiscal effort per student or aggregate expenditures (using the measure most favorable to the LEA) for the third preceding fiscal year.

Example: In Federal fiscal year 1990, and LEA secures a waiver because its fiscal effort in the preceding year (1988) is less than 90 percent of its fiscal effort in the second preceding fiscal year (1987) due to exceptional or uncontrollable circumstances. In assessing whether the LEA maintained effort during the next fiscal year (1991), the SEA may consider the LEA's expenditures for the second preceding fiscal year (1988) (the year for which the LEA needed a waiver) to be no less than 90 percent of the LEA's expenditures in the prior fiscal year (1987).

(Authority: 20 U.S.C. 2728(a)(3))

§ 200.43 What comparability of services requirements apply to this program?

(a) Except as provided in paragraph (b) of this section and § 200.45, an LEA may receive funds under this part only if, on a districtwide or grade span basis.—

(1) The LEA uses State and local funds to provide services in project areas that, taken as a whole, are at least comparable to services being provided in school attendance areas that are not receiving funds under this part; or

(2) In the event the LEA selects all its school attendance areas as project areas, the LEA uses State and local funds to provide services that, taken as a whole, are substantially comparable in each project area.

(b) An LEA with not more than one school attendance area for each grade span is not required to meet the comparability requirements in paragraph (a) of this section.

(c)(1) An LEA shall be considered to have met the comparability requirements in paragraph (a) of this section if it either—

(i) Files with the SEA a written assurance that it has established and implemented—

(A) A districtwide salary schedule;

(B) A policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

(C) A policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies; or

(ii) Establishes and implements other measures for determining compliance such as the following:

(A) Compares the average number of students per instructional staff in each project school with the average number of students per instructional staff in schools not participating in programs under this part. A project school is comparable if its average does not exceed 110 percent of the average of schools not participating in programs under this part.

(B) Compares the average instructional staff salary expenditure per student in each project school with the average instructional staff salary expenditure per student in schools not participating in programs under this part. A project school is comparable if its average is at least 90 percent of the average of schools not participating in programs under this part.

(2) In determining compliance with paragraph (a) of this section, and LEA does not need to consider unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year.

(d)(1) An LEA shall develop written procedures to ensure compliance with paragraph (a) of this section.

(2) The written procedures must include a process for demonstrating that State and local funds are used to provide services in project areas that are at least comparable to the services provided with State and local funds in school attendance areas that are not receiving services with funds under this part.

(e) An LEA shall maintain annual records documenting compliance with paragraph (a) of this section.

(f)(1) The SEA shall monitor each LEA's compliance with the comparability requirements.

(2) If an LEA is found not to be in compliance with the comparability requirements, the amount to be withheld or repaid is the amount or percentage by which the LEA failed to comply with the measures established under paragraph (c) of this section.

(Authority: 20 U.S.C. 2728(c), (d))

§ 200.44 What supplement, not supplant requirement applies to this program?

(a) Except as provided in § 200.45(a)(1), and LEA may use funds available under this part only to supplement and, to the practicable, increase the level of non-Federal funds that would, in the absence of funds under this part, be made available for the education of pupils participating in Chapter 1 projects, and in no case may funds available under this part be used to supplant those non-Federal funds.

(b) To meet the requirement in paragraph (a) of this section, an LEA is not required to provide services under this part through use of a particular instructional method or in a particular instructional setting.

(Authority: 20 U.S.C. 2728(b), (d))

§ 200.45 How may an LEA exclude special State and local funds from comparability and supplement, not supplant determinations?

(a) *General rule.* (1) For the purpose of determining compliance with the comparability requirements in § 200.43 and the supplement, not supplant requirement in § 200.44, an LEA may exclude State and local funds spent in carrying out the following types of programs:

(i) Special State programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018 (d)(1)(B) of the Act.

(ii) Special local programs designed to meet in the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that the SEA has determined in advance under paragraph (c) of this section meet the requirements in section 1018(d)(1)(B) of the Act.

(2) For the puspose of determining compliance with the comparability requirements in § 200.43 only, an LEA may also exclude State and local funds

spent in carrying out the following types of programs:

(i) Bilingual education for children of limited English proficiency.

(ii) Special education for handicapped children.

(iii) State phase-in programs that the Secretary has determined in advance under paragraph (b) of this section meet the requirements in section 1018(d)(2)(B) of the Act.

(b) *Secretarial determination regarding State programs.* (1) In order for an LEA to exclude State and local funds spent on State programs under paragraphs (a)(1)(i) and (2)(iii) of this section, an SEA shall request the Secretary to make an advance determination of whether—

(i) A special State program under paragraph (a)(1)(i) of this section meets the requirements in section 1018(d)(1)(B) of the Act; or

(ii) A state phase-in program under paragraph (a)(2)(iii) of this section meets the requirements in section 1018(d)(2)(B) of the Act.

(2) Before making a determination, the Secretary requires the SEA to submit copies of the State law and implementing rules, regulations, orders, guidelines, and interpretations that the Secretary may need to make the determination.

(3) The Secretary makes the determination in writing and includes the reasons for the determination.

(4) If there is any material change in the pertinent State law affecting the program, the SEA shall submit those changes to the Secretary.

(c) *SEA determination regarding local programs.* (1) In order for an LEA to exclude State and local funds spent on a special local program under paragraph (a)(1)(ii) of this section, the LEA shall request the SEA to make an advance determination of whether that program meets the requirements in section 1018(d)(1)(B) of the Act.

(2) Before making a determination, the SEA shall require the LEA to submit copies of the local law and implementing rules, regulations, guidelines, and interpretations that the SEA may need to make the determination.

(3) The SEA shall make the determination in writing and include the reasons for its determination.

(4) If there is any material change in the pertinent local requirements affecting the program, the LEA shall submit those changes to the SEA.

(Authority: 20 U.S.C. 2728 (b), (c), (d))

§ 200.46 What is the maximum amount of funds an LEA may carry over?

(a) *Limitation on carryover.* The amount of funds allocated to an LEA under §§ 200.22–200.25 that remains available for obligation for one additional year under section 412(b) of GEPA is limited to—

(1) No more than 25 percent of the funds allocated to the LEA from the Federal fiscal year 1989 appropriation (allocated to the LEA for the period July 1, 1989–September 30, 1990); and

(2) No more than 15 percent of the funds allocated to the LEA from the Federal fiscal year 1990 appropriation (allocated to the LEA for the period July 1, 1990–September 30, 1991) and each subsequent year's appropriation.

(b) *Exceptions.* (1) The percentage limitations in paragraph (a) of this section do not apply to an LEA that receives less than $50,000 under §§ 200.22–200.25 for any fiscal year.

(2) An SEA may grant an LEA a waiver of the percentage limitations in paragraph (a) of this section if—

(i) The SEA determines, on a one-time basis, that the LEA's request for the waiver is reasonable and necessary; or

(ii) A supplemental Chapter 1 appropriation becomes available for obligation in any fiscal year.

(Authority: 20 U.S.C. 2832(b), 1225(b))

§ 200.47 What is the prohibition against considering payments under this part in determining State aid?

A State may not take into consideration payments under this part in determining—

(a) The eligibility of an LEA for State aid; or

(b) The amount of State aid to be paid to an LEA for free public education.

(Authority: 20 U.S.C. 2854)

§§ 200.48–200.49 [Reserved]

Subpart F—What Requirements Govern Participation in the Chapter 1 LEA Program of Educationally Deprived Children in Private Schools?

General

§ 200.50 What are an LEA's responsibilities for providing Chapter 1 services to children in private schools?

(a) (1) An LEA shall provide to educationally deprived children, who reside in a project area of the LEA and who are enrolled in private elementary and secondary schools, special educational services and arrangements as will ensure those children's participation on an equitable basis in accordance with the requirements in §§ 200.50 through 200.55 and section 1017 of the Act.

(2) The LEA shall provide the opportunity to participate in a manner that is consistent with the number and special educational needs of the educationally deprived children in private schools.

(3) The LEA shall exercise administrative direction and control over funds and property made available under this part that benefit educationally deprived children in private schools.

(4) (i) Services to children enrolled in private schools must be provided by employees of a public agency or through contract by the public agency with a person, an association, agency, or corporation who or which, in the provision of those services, is independent of the private school and of any religious organization.

(ii) This employment or contract must be under the control and supervision of the public agency.

(b) (1) If an LEA allegedly fails to provide for the equitable participation of children in private schools, a parent, teacher, or other concerned individual or organization may file a complaint with the Secretary.

(2) For the purpose of this section, a complaint is a signed, written statement, including documentary evidence, alleging that an LEA has failed to meet its obligation under section 1017(a) of the Act to provide equitable services to children enrolled in private schools.

(3) The Secretary investigates a complaint and issues a letter of finding within 120 days after receipt of the complaint.

(Authority: 20 U.S.C. 2727 (a), (b))

§ 200.51 What are the requirements for consultation with private school officials?

(a) An LEA shall consult with appropriate private school officials—

(1) During all phases of the design and development of the LEA's Chapter 1 project, including consideration of—

(i) Which children will receive services;

(ii) How the children's needs will be identified;

(iii) What services will be offered;

(iv) How and where the services will be provided; and

(v) How the project will be evaluated; and

(2) Before the LEA makes any decision that affects the opportunities of eligible private school children to participate in the LEA's Chapter 1 project.

(b) The LEA shall give private school officials a genuine opportunity to express their views regarding each matter subject to the consultation requirement in paragraph (a) of this section.

(Authority: 20 U.S.C. 2727(a))

§ 200.52 What factors does an LEA use in determining equitable participation?

(a) *Equal expenditures.* (1) Expenditures of funds made available under this part for educational services and arrangements for educationally deprived children in private schools must be equal (taking into account the number of children to be served and the special education needs of such children) to expenditures of funds made available under this part for children enrolled in the public schools of the LEA.

(2) Before determining equal expenditures under paragraph (a)(1) of this section, an LEA shall pay for reasonable and necessary administrative costs of providing services to public and private school children, including special capital expenses defined in § 200.57(a)(2), from the LEA's whole allocation of funds under this part.

(b) *Services on an equitable basis.* (1) The Chapter 1 services that an LEA provides for educationally deprived children in private schools must be equitable (in relation to the services provided to public school children) and must be of sufficient size, scope, and quality to give reasonable promise of substantial progress toward meeting the special educational needs of the private school children to be served.

(2) Services are equitable if the LEA—

(i) Assesses, addresses, and evaluates the specific needs and educational progress of eligible private school children on the same basis as public school children;

(ii) Provides, in the aggregate, approximately the same amount of instructional time and materials for each private school child as it provides for each public school child;

(iii) Expends equal amounts on services for public and private school children in accordance with paragraph (a) of this section; and

(iv) Provides private school children with an opportunity to participate that is equitable to the opportunity provided to public school children.

(Authority: 20 U.S.C. 2727(a))

§ 200.53 What are the requirements to ensure that funds do not benefit a private school?

(a) An LEA shall use funds under this part to provide services that supplement, and in no case supplant, the level of services that would, in the absence of Chapter 1 services, be available to participating children in private schools.

(b) An LEA shall use funds under this part to meet the special educational needs of participating children in a private school, but not for—

(1) The needs of the private school; or

(2) The general needs of children in the private school.

(Authority: 20 U.S.C. 2727(a), 2728(b))

§ 200.54 What are the requirements concerning equipment and supplies for the benefit of private school children?

(a) To meet the requirements of section 1017 of the Act, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the LEA acquires with funds under this part for the benefit of educationally deprived children in private schools.

(b) The public agency may place equipment and supplies in a private school for the period of time needed for the program.

(c) The public agency shall ensure that the equipment or supplies placed in a private school—

(1) Are used only for Chapter 1 purposes; and

(2) Can be removed from the private school without remodeling the private school facility.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for Chapter 1 purposes; or

(2) Removal is necessary to avoid unauthorized use of the equipment or supplies for other than Chapter 1 purposes.

(e) For the purpose of this section, the term "public agency" includes the LEA.

(Authority: 20 U.S.C. 2727(a))

§ 200.55 May funds be used for construction of private school facilities?

No funds under this part may be used for repairs, minor remodeling, or construction of private school facilities.

(Authority: 20 U.S.C. 2727(a))

Capital Expenses

§ 200.56 How does a State receive a payment for capital expenses?

(a) From the amount appropriated for capital expenses under section 1017(d) of the Act, the Secretary pays a State an amount that bears the same ratio to the amount appropriated as the number of private school children in the State who were served under Chapter 1 of the ECIA during the period July 1, 1984 through June 30, 1985 bears to the total number of private school children served during that period in all States.

(b) The Secretary reallocates funds not used by a State for purposes of § 200.57 among other States on the basis of need.

(Authority: 20 U.S.C. 2727(d))

§ 200.57 How does an LEA receive a payment for capital expenses?

(a) (1) An LEA may apply to the SEA for a payment to cover capital expenses that the LEA, in providing equitable Chapter 1 services to eligible children in private schools—

(i) Has paid from funds provided under Chapter 1 of the ECIA since July 1, 1985;

(ii) Is currently paying from funds provided under this part; or

(iii) Would incur because of an expected increase in the number or percentage of private school children to be served.

(2) "Capital expenses" means only expenditures for noninstructional goods and services that are incurred as a result of implementation of alternative delivery systems to comply with the requirements of *Aguilar* v. *Felton*. These expenditures—

(i) Include—

(A) The purchase, lease, and renovation of real and personal property (including but not limited to mobile educational units and leasing of rental sites or space);

(B) Insurance and maintenance costs;

(C) Transportation; and

(D) Other comparable goods and services; and

(ii) Do not include the purchase of instructional equipment such as computers.

(b) The LEA's application for payments under this section must contain—

(1) The amount, by fiscal year, of capital expenses paid from funds under this part and Chapter 1 of the ECIA since July 1, 1985;

(2) The nature of the capital expenses;

(3) An assurance that the LEA will use payments received under this section in accordance with § 200.58;

(4) An assurance that the LEA has consulted with appropriate private school officials in preparation of its application;

(5) If appropriate, information sufficient to support anticipated increases in the number or percentage of private school children to be served; and

(6) Any other information the SEA may need to make a determination of need under paragraph (c) of this section.

(c) An SEA shall distribute funds it receives under § 200.56 to LEAs that apply on the basis of need. In determining need, the SEA shall establish criteria such as the following:

(1)(i) The extent to which payments under this section would be used by an LEA to increase the number of percentage of private school children served; or

(ii) The extent to which an LEA is providing Chapter 1 services to at lease the same number of percentage of private school children the LEA served during the period July 1, 1984 through June 30, 1985.

(2) The degree to which the quality of services an LEA is providing or would provide to private school children equals or exceeds the quality of services provided during the period July 1, 1984 through June 30, 1985.

(3) The percentage of funds the LEA has paid for capital expenses in relation to its basic Chapter 1 grant.

(Authority: 20 U.S.C. 2727(d))

§ 200.58 How does an LEA use payments for capital expenses?

(a) An LEA shall use payments received under § 200.57 for the following:

(1) To provide Chapter 1 services to benefit, to the extent possible, the public and private school children who were or are adversely affected by the LEA's expenditures for capital expenses.

(2) To cover capital expenses the LEA is incurring or will incur to maintain or increase the number of percentage of private school children being served.

(b) The LEA may not take the payments received under § 200.57 into account in meeting the requirements in § 200.52.

(c) The LEA shall account separately for payments receive under § 200.57.

(Authority: 20 U.S.C. 2727 (a), (d))

§ 200.59 [Reserved]

Bypass

§ 200.60 What general requirements govern the implementation of a bypass?

(a) The Secretary implements a bypass in accordance with the procedures in 34 CFR 76.670 through 76.677 if—

(1) An LEA is prohibited by law from providing Chapter 1 services for private school children on an equitable basis; or

(2) The Secretary determines, following a complaint or an investigation, that an LEA has substantially failed to provide for the participation on an equitable basis of private school children.

(b) If the Secretary implements a bypass, the Secretary—

(1) Waives the LEA's responsibility for providing Chapter 1 services for private school children and arranges to provide the required services;

(2) Consults with appropriate public and private school officials; and

(3) Deducts the costs of the services, including any administrative costs, from the appropriate allocations of funds provided under this part to the affected LEA and SEA.

(c) Pending the final resolution of an investigation or a complaint that could result in a bypass action, the Secretary may withhold from the allocation of the affected LEA or SEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

(Authority: 20 U.S.C. 2727(b))

§§ 200.61–200.69 [Reserved]

Subpart G—What Are Other State Responsibilities for the Chapter 1 LEA Program?

§ 200.70 Does a State have authority to issue State regulations for the Chapter 1 LEA Program?

(a)(1) Except as provided in paragraph (b) of this section, Chapter 1 does not preempt, prohibit, or encourage State rules, regulations, or policies issued pursuant to State law.

(2) If a State issues rules, regulations, or policies, they may not be inconsistent with the provisions of the following:

(i) The Chapter 1 statute.

(ii) The regulations in this part.

(iii) Other applicable Federal statutes and regulations.

(b) A State may not issue rules, regulations, or policies that limit LEAs' decisions affecting funds received under this part regarding—

(1) Grade levels to be served;

(2) Basic skill areas to be addressed;

(3) Instructional settings, materials, or teaching techniques to be used;

(4) Instructional staff to be employed, so long as the staff meets State certification and licensing requirements for education personnel; or

(5) Other essential support services.

(c) Nothing in paragraph (b) of this section limits an SEA's—

(1) Responsibility to work jointly with an LEA in suggesting various activities and approaches for program improvement under §§ 200.37–200.38;

(2) Authority to review and approve an LEA's application including determining that the activities in the application are supported by the LEA's needs assessment; or

(3) Responsibility to ensure that an LEA uses funds under this part in accordance with all applicable requirements.

(d) The State shall identify any State rule, regulation, or policy relating to the administration and operation of Chapter 1 programs funded under this part, including those based on State interpretation of any Federal law, regulation, or guideline, as a State-imposed requirement.

(e)(1)(i) Except as provided in paragraph (e)(1) (ii) and (iii) of this section, if a State issues major rules or regulations relating to the administration or operation of programs funded under this part, the State shall convene a State committee of practitioners to review before publishing any major proposed or final rule or regulation.

(ii) In an emergency situation is which a major rule or regulation must be issued within a very limited time to assist LEAs with the operation of programs under this part, the State—

(A) May issue the regulation without consulting the committee of practitioners; but

(B) Shall immediately thereafter convene the State committee of practitioners to review the emergency rule or regulation prior to issuance in final form.

(iii) The State shall ensure that the committee of practitioners reviews non-major rules or regulations before publication.

(2) If a State does not issue rules or regulations relating to the administration or operation of programs under this part but issues policies that the SEA and LEAs are required to follow, the State must comply with the requirements in this section for issuing rules and regulations.

(3)(i) The committee of practitioners must include—

(A) Administrators;

(B) Teachers;

(C) Parents;

(D) Members of local boards of education; and

(E) Representatives of private school children.

(ii) A majority of the committee must be representatives of LEAs.

(iii) Members of the committee must be knowledgeable about the Chapter 1 LEA Program.

(4) SEAs are encouraged to request from appropriate organizations recommendations for membership on the committee.

(Authority: 20 U.S.C. 2831)

§ 200.71 How may State personnel pay with funds available under this part be assigned to State programs?

(a) As provided in paragraph (b) of this section, an SEA may used funds received under § 200.72(a) to pay the salary costs for any employee assigned to programs funded under this part and special State programs that meet the requirements of § 200.48(a)(1) (i) and (2).

(b) Except as provided in paragraph (c) of this section, salary costs are allowable charges to funds received under § 200.72(a) if the following conditions are met:

(1) An employee's assignments are related to the SEA's administrative, training, and technical assistance responsibilities under the programs.

(2) The SEA maintains contemporaneous time distribution records reflecting the actual amount of time the employee spends on the programs.

(3) The time distribution records are signed by the employee's supervisor.

(4) Actual costs are charged to the programs on the basis of the employee's time distribution records.

(c) If an employee is assigned administrative, training, and technical assistance duties that jointly benefit programs funded under this part and special State programs that meet the requirements of § 200.48 (a)(1)(i) and (a)(2), costs may be charged to the programs on a basis other than the time spent on each of the programs, provided charges are equitably distributed among funding sources.

Example. An employee spends three hours developing a manual for LEAs to use to improve parent participation in compensatory programs supported with funds under this part and under a State compensatory education program. Since only one manual is produced, the employee is unable to divide the actual time spent on each program. Therefore, the LEA may prorate costs, for example, to each program on the basis of the proportion of funds allocated for each of the programs benefiting from the manual.

(Authority: 20 U.S.C. 2888(b))

§ 200.72 What funds are available for an SEA to carry out its responsibilities?

(a) *Funds for State administration.* (1) Except for programs under Part C of Chapter 1 and as provided in paragraph (a)(2) of this section, an SEA shall use funds received under section 1404(a) of the Act for the proper and efficient performance of its duties under Chapter 1.

(2) The SEA may not use more than 15 percent of the funds referred to in paragraph (a)(1) of this section for indirect costs.

(b) *Funds for implementing school improvement programs.* (1) An SEA shall use funds made available under section 1405 of the Act for direct educational services in schools implementing program improvement plans under § 200.38(b)

(2) Parents of participating children, school staff, the LEA, and the SEA shall jointly agree to the selection of providers of technical assistance and the best use of funds available under paragraph (b)(1) of this section, which may include assistance from—

(i) An institution of higher education;

(ii) A federally supported educational laboratory or center;

(iii) State personnel with expertise in educational improvement;

(iv) Locally, State, or nationally based consultants; and

(v) Other providers of the specific services required by a school's program improvement plan.

(3) The SEA may not use the funds referred to in paragraph (b)(1) of this section for State administration.

(Authority: 20 U.S.C. 2824, 2825)

Complaint Procedures of the SEA

§ 200.73 What complaint procedures shall an SEA adopt?

An SEA shall adopt written procedure for:

(a) Receiving and resolving any complaint that the SEA or an LEA is violating a Federal statute or regulations that apply to the Chapter 1 LEA Program;

(b) Reviewing an appeal from a decision of an LEA with respect to a complaint; and

(c) Conducting an independent on-site investigation of a complaint if the SEA determines that an on-site investigation is necessary.

(Authority: 20 U.S.C. 2831(a))

§ 200.74 What are the minimum complaint procedures?

An SEA shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the SEA receives a complaint:

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the SEA.

(Authority: 20 U.S.C. 2831(a))

§ 200.75 How does an organization or individual file a complaint?

An organization or individual may file a written signed complaint with an SEA. The complaint must include:

(a) A statement that the SEA or an LEA has violated a requirement of a Federal statute or regulations that apply to the Chapter 1 LEA Program; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 2831(a))

§§ 200.76–200.79 [Reserved]

Subpart H—What Are the National Evaluation Standards?

Evaluation by an LEA

§ 200.80 How does and LEA evaluate student achievement?

(a) An LEA shall evaluate student achievement under § 200.35(a)(1)(ii) as follows:

(1)(i) The LEA shall assess—

(A) The Chapter 1 participants' achievement in reading, mathematics, and language arts, not including projects designed to teach English to limited English speaking children, in grades 2 through 12, as appropriate, after receiving Chapter 1 services; compared to

(B) An estimate of what their achievement would have been in the absence of Chapter 1 services.

(ii) In assessing achievement in language arts, and LEA may use tests designed to measure language arts or reading. If a reading test is used, the LEA shall assess achievement in both basic and more advanced skills.

(2) With regard to more advanced skills, the LEA shall assess the progress of Chapter 1 participants as measured by—

(i) (A) The "comprehension" or equivalent score of a nationally normed reading test; and

(B) The "problems and applications" or equivalent score of a nationally normed mathematics test; or

(ii) A test without national norms if—

(A) It is the instrument used for other required achievement reporting under this part;

(B) It provides an appropriate "comprehension" and "problems and applications" score; and

(C) The LEA meets the conditions in § 200.82(b)(2).

(b)(1) The LEA shall measure student achievement under paragraph (a) of this section over a period of approximately 12 months.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the LEA shall report on either a spring-to-spring testing interval or a fall-to-fall testing interval.

(ii) An LEA that meusured achievement on a fall-spring testing interval during the 1988–89 school year may continue to do so for one additional year only (the 1989–90 school year) if the SEA determines that implementation of the annual cycle in 1989–90 would impose a substantial hardship on the LEA.

Example: An LEA uses the results of a pretest administered in September 1988 and a post-test administered in May 1989 to measure and report on the achievement of children participating in projects under this part during the 1988–89 school year. The SEA determines that it would be a substantial hardship for the LEA to measure and report on children's achievement for the 1989–90 school year on either a spring-to-spring or fall-to-fall testing interval. Therefore, the LEA may continue to report on participating children's achievement on a fall-spring testing interval for the 1989–90 school year. However, the LEA must report on participating children's achievement in school year 1990–91 using either: pre-tests administered during the fall of 1990 and post-tests administered during the fall of 1991; or pre-tests administered during the spring of 1990 and post-tests administered during the spring of 1991.

(c)(1) At least once during the three-year evaluation period required under § 200.35(a), the LEA shall collect additional information to determine whether student achievement gains are sustained over a period of more than 12 months (see § 200.35(a)(2)).

(2) The LEA shall report this information on either a spring-spring-spring testing interval or a fall-fall-fall testing interval.

(d) In estimating expected performance under paragraph (a)(1)(ii) of this section and elsewhere in this subpart, the LEA shall use the performance of children in a norm sample developed locally, by the SEA, or by a test publisher.

(e) Any test instrument used by the LEA under this subpart must be the current edition or the immediately previous edition.

(Authority: 20 U.S.C. 2729(a), (c), 2835)

§ 200.81 What technical standards does an LEA apply in evaluating student achievement?

An LEA shall ensure that its procedures for evaluating the achievement of children in programs under this part are consistent with the following technical standards:

(a) Representativeness of evaluation findings.

(b) Reliability and validity of evaluation instruments and procedures.

(c) Valid assessment of achievement gains.

(d) Quality control mechanisms to minimize error in evaluation procedures.

(Authority: 20 U.S.C. 2729(a), 2835)

§ 200.82 What procedures does an LEA use in evaluating student achievement?

Unless it is using approved alternative procedures under § 200.83, an LEA shall use the following procedures to evaluate student achievement in each Chapter 1 project funded under this part that provides instructional services in reading, language arts, or mathematics in grades 2 through 12 during the regular school year:

(a) The LEA shall administer a pretest and a posttest separated by approximately 12 months.

(b) The LEA may use a test with or without national norms as follows:

(1) If the LEA uses a test with national norms, the LEA shall administer the test within the appropriate range of the test publisher's norming dates.

(2) If the LEA uses a test without national norms, the LEA shall adhere to technical requirements for equating this test with a nationally normed test as specified by the Title I Evaluation and Reporting System or other valid methods accepted by the Secretary.

(Authority: 20 U.S.C. 2729(a), 2835)

§ 200.83 What alternative procedures may an LEA use?

(a) An LEA may use alternative procedures to those in § 200.82 for evaluating student achievement if, before using the alternative procedures, the LEA obtains the approval of, first, the SEA and, then, the Secretary.

(b) In order for the SEA and the Secretary to approve alternative procedures, the LEA shall demonstrate that the procedures—

(1) Yield a valid and reliable measure of—

(i) The Chapter 1 children's performance in reading, language arts, or mathematics; and

(ii) The children's expected performance; and

(2) Produce results that can be expressed in the common reporting scale established by the Secretary for SEA reporting.

(Authority: 20 U.S.C. 2729(a), 2835)

§ 200.84 How does an LEA report the results of student achievement to the SEA?

(a)(1) In reporting the results of student achievement evaluated under §§ 200.80–200.83, an LEA shall use—

(i) The common reporting scale established by the Secretary for SEA reporting; or

(ii) Another form of local reporting approved by the SEA.

(2) If the SEA approves another form of reporting, the LEA shall include sufficient information to enable the SEA to convert the achievement results to the common reporting scale.

(b) Unless requested by the SEA, the LEA is not required to include in its evaluation report the results of the long-term evaluation required under § 200.80(c).

(Authority: 20 U.S.C. 2729(a) 2835)

Evaluation by An SEA

§ 200.85 What technical standards does an SEA use in conducting its evaluation?

In conducting its evaluation under § 200.35(b), an SEA shall use technical standards that are commensurate with and appropriately reinforce those required of LEAs in § 200.81.

(Authority: 20 U.S.C. 2729(b), 2835)

§ 200.86 What requirements govern an SEA sampling plan?

(a) If the SEA wishes to use sampling in its evaluation of programs conducted under this part, the SEA shall submit, for prior approval by the Secretary, a proposed sampling plan designed to ensure that evaluations will be conducted in a representative sample of its LEAs in any school year.

(b) The Secretary approves a sampling plan that will provide reliable and representative data under this subpart.

(c) (1) The SEA shall review its sampling plan at least once every three years.

(2) If, based on this review or other circumstances, the sampling plan requires changes, the SEA shall request reapproval of the plan by the Secretary.

(Authority: 20 U.S.C. 2835)

§ 200.87 How does an SEA aggregate LEA student achievement data for inclusion in its evaluation?

(a) An SEA shall include, for all LEAs or a sample of LEAs if a sampling plan has been approved by the Secretary, the following information in its evaluation:

(1) A statewide average of student achievement gains resulting from participation in Chapter 1 projects under this part reported for—

(i) Each participating grade level from 2 through 12; and

(ii) Each of the following subjects: reading, mathematics, and language arts.

(2) A statewide average of progress students are making in more advanced skills, separately for reading and mathematics.

(3) Additional data specified by the Secretary.

(4) If applicable—

(i) The number of students excluded from the evaluation because of erroneous or missing data; and

(ii) The reasons for the exclusion.

(b) The SEA shall—

(1) Report student achievement gains on either a spring-to-spring or fall-to-fall basis; and

(2) Express each statewide average achievement gain in the common reporting scale established by the Secretary.

(Authority: 20 U.S.C. 2728(b), 2835)

Allowable and Nonallowable Costs

§ 200.88 For what evaluation activities may an LEA or SEA use funds available under this part?

(a) An LEA or SEA may use funds made available under this part for any of the following evaluation activities:

(1) Identifying specific strengths and weaknesses of a project.

(2) Determining the results of a project.

(3) Disseminating the results of Chapter 1 evaluations.

(b) In addition to the requirement concerning the supplementary nature of funds available under this part in § 200.44 and other rules governing the allowability of Chapter 1 expenditures, the provisions of paragraph (c) of this section apply to the use of funds available under this part to support the purchase, administration, scoring, and analysis of evaluation instruments.

(c) Except for cases in which data meeting these needs are already available, the LEA or SEA may use funds available under this part for any of the following:

(1) Testing Chapter 1 participants for evaluation purposes only.

(2) In order to permit the LEA or SEA to convert its evaluation results to the common scale, administering a nationally normed test to all, or a representative sample of, the Chapter 1 participants if the LEA or SEA has used a test without national norms for evaluation purposes.

(3) Testing an appropriate number of children no longer receiving Chapter 1 services to determine whether achievement gains are sustained over a period of more than 12 months (see § 200.35(a)(2)).

(Authority: 20 U.S.C. 2721(a), 2728(b), 2729(a), 2835)

§ 200.89 For what evaluation activities may an LEA or SEA not use funds available under this part?

An LEA or SEA may not use funds available under this part for any of the following evaluation activities:

(a) General districtwide or statewide testing programs.

(b) Establishing local or State norms.

(c) Development of tests to meet the standards in this subpart.

(Authority: 20 U.S.C. 2721(a), 2728(b))

General Education Provisions Act [1]

SHORT TITLE; APPLICABILITY; DEFINITIONS; APPROPRIATIONS

SEC. 400. (a) This title may be cited as the "General Education Provisions Act."

(b) Except where otherwise specified, the provisions of this title shall apply to any program for which an administrative head of an education agency has administrative responsibility as provided by law or by delegation of authority pursuant to law.

(c)(1) For the purposes of this title, the term—

(A) "applicable program" means any program to which this title is, under the terms of subsection (b), applicable;

(B) "applicable statute" means—

(i) the Act or the title, part or section of an Act, as the case may be, which authorizes the appropriation for an applicable program;

(ii) this title; and

(iii) any other statute which under its terms expressly controls the administration of an applicable program;

(C)[2] "Assistant Secretary" means the Assistant Secretary of Health, Education, and Welfare for Education;

(D)[3] "Commissioner" means the Commissioner of Education;

(E) "Director" means the Director of the National Institute of Education; and

(F)[4] "Secretary" means the Secretary of Health, Education, and Welfare.

(2) Nothing in this title shall be construed to affect the applicability of the Civil Rights Act of 1964 to any program subject to the provisions of this title.

(3) No Act making appropriations to carry out an applicable program shall be considered an applicable statute.

(d) Except as otherwise limited in this title, there are authorized to be appropriated for any fiscal year such sums as may be necessary to carry out the provisions of this title.

(e)(1) The aggregate of the appropriations to the agencies in the Education Division and to the Office of Assistant Secretary for any fiscal year shall not exceed the limitations set forth for that fiscal year in subparagraph (2).

(2)(A) Except as is provided in subparagraph (B), the appropriations to which paragraph (1) applies—

(i) shall not exceed $7,500,000,000 for the fiscal year ending June 30, 1975, $8,000,000,000 for the fiscal year ending June 30,

APPENDIX C

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[1] The General Education Provision Act was enacted as title IV of Public Law 90-247.
The organizational changes made by the Department of Education Reorganization Act, P.L. 96-88, are also indicated in this text.

[2] The Office of Assistant Secretary of H.E.W. for Education was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 503, 93 Stat. 690 (Assistant secretary's functions transferred to Secretary of Education by sec. 301 of that Act).

[3] The Education Division of H.E.W. (including the office of Commissioner of Education) was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 503, 93 Stat. 690 (Commissioner's functions transferred to Secretary of Education by sec. 301 of that Act).

[4] All previous functions of the Secretary of H.E.W. provided for in the General Education Provisions Act and various other Education-related statutes were transferred to the Secretary of Education by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

1976, and $9,000,000,000 for the fiscal year ending June 30, 1977; and

(iii) shall not exceed such amounts as may be authorized by the law and limited by this subparagraph.

(B) The limitations set forth in subparagraph (A) shall not apply—

(i) to uncontrollable expenditures under obligations created under part B of title IV of the Higher Education Act of 1965, parts C and D of title VII of such Act, and the Emergency Insured Student Loan Act of 1969; and

(ii) to any other expenditure under an obligation determined by the Commissioner pursuant to, or in accordance with, law to be an uncontrollable expenditure of the Office of Education.

(20 U.S.C. 1221) Enacted Jan. 2, 1968, P.L. 90-247, sec. 401, 81 Stat. 814; amended Oct. 16, 1968, P.L. 90-576, sec. 301(a), 82 Stat. 1094; amended April 13, 1970, P.L. 91-230, sec. 401(a)(2), 84 Stat. 164; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326, amended August 21, 1974, P.L. 93-380, sec. 505(a)(1), 88 Stat. 561, 562; see also general reference Oct. 17, 1979, P.L. 96-88, secs. 301, 503, 93 Stat. 677-679, 690

CONTROL OF PAPERWORK

Sec. 400A. (a)(1)(A) In order to eliminate excessive detail and unnecessary and redundant information requests and to achieve the collection of information in the most efficient and effective possible manner, the Secretary shall coordinate the collection of information and data acquisitioned activities of all Federal agencies, (i) whenever the respondents are primarily educational agencies or institutions, or (ii) whenever the purpose of such activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

(B) There is hereby established a Federal Education Data Acquisition Council, to consist of members appointed by the Secretary who shall represent the public and the major agencies which collect and use education data, including one representative each of the Office of Management and Budget and of the Office of Federal Statistical Policy and Standards. The members representing the public may be appointed for not more than three years. The Council shall advise and assist the Secretary with respect to the improvement, development, and coordination of Federal education information and data acquisition activities, and shall review the policies, practices, and procedures established by the Secretary. The Council shall meet regularly during the year and shall be headed by an individual from an agency which has expertise in data collection but which undertakes no major data collection of education data.

(2) For the purposes of this section, the term—

(A) "information" has the meaning given it by section 3502 of title 44, United State Code;

(B) "Federal agency" has the meaning given it by section 3502 of the same title; and

(C) "educational agency or institution" means any public or private agency or institution offering education programs.

(3)(A) The Secretary shall review and coordinate all collection of information and data acquisition activities described in paragraph (1)(A) of this subsection, in accordance with procedures approved by the Federal Education Data Acquisition Council. Such procedures shall be designed in order to enable the Secretary to determine whether proposed collection of information and data acquisition activities are excessive in detail, unnecessary, redundant, ineffective, or excessively costly, and, if so, to advise the heads of the relevant Federal agencies.

(B) No collection of information or data acquisition activity subject to such procedures shall be subject to any other review, coordination, or approval procedure outside of the relevant Federal agency, except as required by this subsection and by the Director of the Office of Management and Budget under the rules and regulations established pursuant to chapter 35 of title 44, United States Code. If a requirement for information is submitted pursuant to this Act for review, the timetable for the Director's approval established in section 3507 of the Paperwork Reduction Act of 1980 shall commence on the date the request is submitted, and no independent submission to the Director shall be required under such Act.

(C) The procedures established by the Secretary shall include a review of plans for evaluations and for research when such plans are in their preliminary stages, in order to give advice to the heads of Federal agencies regarding the data acquisition aspects of such plans.

(b)(1) The Secretary shall assist each Federal agency in performing the review and coordination required by this section and shall require of each agency a plan for each collection of information and data acquisition activity, which shall include—

(A) a detailed justification of how information once collected will be used;

(B) the methods of analysis which will be applied to such data;

(C) the timetable for the dissemination of the collected data; and

(D) an estimate of the costs and man-hours required by each educational agency or institution to complete the request and an estimate of costs to Federal agencies to collect, process, and analyze the information, based upon previous experience with similar data or upon a sample of respondents.

(2) In performing the review and coordination required by this section, the Secretary shall assure that—

(A) no information or data will be requested of any educational agency or institution unless that request has been approved and publicly announced by the February 15 immediately preceding the beginning of the new school year, unless there is an urgent need for this information or a very unusual circumstance exists regarding it;

(B) sampling techniques, instead of universal responses, will be used wherever possible, with special consideration being given to the burden being placed upon small school districts, colleges, and other educational agencies and institutions; and

(C) no request for information or data will be approved if such information or data exist in the same or a similar form in the automated indexing system required to be developed pursuant to subsection (d).

(3) Each educational agency or institution subject to a request under the collection of information and data acquisition activity and their representative organizations shall have an opportunity, during a thirty-day period, to comment to the Secretary on the collection of information and data acquisition activity. The exact data instruments for each proposed activity shall be available to the public upon request during this comment period.

(4) No changes may be made in the plans for the acquisition of that information or data, except changes required as a result of the review described in this section, after such plans have been finally approved under this section, unless the changed plans go through the same approval process.

(5) The Secretary may waive the requirements of this section for individual research and evaluation studies which are not designated for individual project monitoring or review, provided that—

(A) the study shall be of a nonrecurring nature;

(B) any educational agency or institution may choose whether or not to participate, and that any such decision shall not be used by any Federal agency for purposes of individual project monitoring or funding decisions;

(C) the man-hours necessary for educational agencies and institutions to respond to requests for information or data shall not be excessive, and the requests shall not be excessive in detail, unnecessary, redundant, ineffective, or excessively costly; and

(D) the Federal agency requesting information or data has announced the plans for the study in the Federal Register.

The Secretary shall inform the relevant agency or institution concerning the waiver decision within thirty days following such an announcement, or the study shall be deemed waived and may proceed. Any study waived under the provisions of this subsection shall be subject to no other review than that of the agency requesting information or data from educational agencies or institutions.

(6) Nothing in this section shall be construed to interfere with the enforcement of the provisions of the Civil Rights Act of 1964 or any other nondiscrimination provision of Federal law.

(c) The Secretary shall, insofar as practicable, and in accordance with the provisions of this Act, provide educational agencies and institutions and other Federal agencies, pursuant to the requirement of section 406(f)(2)(A), with summaries of information collected and the data acquired by Federal agencies, unless such data were acquired on a confidential basis.

(d) The Secretary shall, insofar as practicable—

(1) develop standard definitions and terms consistent, wherever possible, with those established by the Office of Federal Statistical Policy and Standards, Department of Commerce, to be used by all Federal agencies in dealing with education-related information and data acquisition requests;

(2) develop an automated indexing system for cataloging all available data;

(3) establish uniform reporting dates among Federal agencies for the information and data acquisition required after review under this section;

(4) publish annually a listing of education data requests, by Federal agency, and for the programs administered in the Education Division, publish a listing annually of each such program with its appropriation and with the data burden resulting from each such program; and

(5) require the Federal agency proposing the collection of information or data acquisition activity to identify in its data instrument the legislative authority specifically requiring such collection, if any, and require the responding educational agency or institution to make the same identification if it in turn collects such information or data from other agencies or individuals.

(e)(1) Subject to the provisions of paragraph (2), the Secretary shall develop, in consultation with Federal and State agencies and local educational agencies, procedures whereby educational agencies and institutions are permitted to submit information required under any Federal educational program to a single Federal or State educational agency.

(2) Any procedures developed under paragraph (1) shall be considered regulations for the purpose of section 431 and shall be submitted subject to disapproval in accordance with section 431(e) of this Act for a period of not to exceed 60 days computed in accordance with such section.

(3) The Secretary shall submit a report to the Congress not less than once every three years, describing the implementation of this section. Such report shall contain recommendations for revisions to Federal laws which the Secretary finds are imposing undue burdens on educational agencies and institutions, and such recommendations shall not be subject to any review by any Federal agency outside the Department.

(f)(1) The Secretary is authorized to make grants from sums appropriated pursuant to this subsection to State educational agencies, including State agencies responsible for postsecondary education, for the development or improvement of education management information systems.

(2) Any State educational agency is eligible for a grant of funds under this subsection subject to the following conditions:

(A) The agency agrees to use such funds for the development or improvement of its management information system and agrees to coordinate all data collection for Federal programs administered by the agency through such a system.

(B) The agency agrees to provide funds to local educational agencies and institutions of higher education for the development or improvement of management information systems when such grants are deemed necessary by the State educational agency.

(C) The State agency agrees to take specific steps, in cooperation with the Secretary and with local educational agencies or institutions of higher education in the State, as appropriate, to eliminate excessive detail and unnecessary and redundant information requests within the State and to achieve the collection of information in the most efficient and effective possible manner so as to avoid imposing undue burdens on local educational agencies or institutions of higher education.

(g) For the purpose of carrying out this subsection

(1) there are authorized to be appropriated for salaries and expenses $600,000 for fiscal year 1979, $1,000,000 for fiscal year 1980, and $1,200,000 for each of the two succeeding fiscal years;

(2) there are authorized to be appropriated for grants under subsections (f) (1) and (2) the sums of $5,000,000 for fiscal year 1979, $25,000,000 for fiscal year 1980, and $50,000,000 for each of the two succeeding fiscal years; and

(3) the sums appropriated according to paragraphs (1) and (2) shall be appropriated as separate line items.

(20 U.S.C. 1221-3) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1212(b), 92 Stat. 2338-2341; amended Aug. 6, 1979, P.L. 96-46, sec. 4(a), 93 Stat. 342 (effective Oct. 1, 1978); amended by reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Dec. 11, 1980, P.L. 96-511, sec. 4(a), 94 Stat. 2826.

PART A—EDUCATION DIVISION OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE[1]

THE EDUCATION DIVISION

SEC. 401. (a) There shall be, within the Department of Health, Education, and Welfare, an Education Division, composed of the agencies listed in subsection (b), which shall be headed by the Assistant Secretary.

(b)(1) The Education Division shall be composed of the following agencies:

(A) The Office of Education; and

(B) The National Institute of Education.

(2) In the Office of the Assistant Secretary there shall be a National Center for Education Statistics.

(20 U.S.C. 1221(a)) Enacted June 23, 1972, P.L. 92-318, sec. 301(a)(2), 86 Stat. 327; amended August 21, 1974, P.L. 93-380, sec. 504(a), 88 Stat. 561.

ASSISTANT SECRETARY FOR EDUCATION[2]

SEC. 402. (a) There shall be in the Department of Health, Education, and Welfare an Assistant Secretary for Education, who shall be appointed by the President by and with the advice and consent of the Senate. The Assistant Secretary for Education shall be compensated at the rate specified for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) The Assistant Secretary shall be the principal officer in the Department to whom the Secretary shall assign responsibility for the direction and supervision of the Education Division.

(20 U.S.C. 1221(b)) Enacted June 23, 1972, P.L. 92-318, sec. 301(a)(2), 86 Stat. 327; amended August 21, 1974, P.L. 93-380, sec. 501(a)(2)(A), 88 Stat. 560.

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[1] The Education Division of the Department of Health, Education, and Welfare was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 503, 93 Stat. 690. The previous functions of the Education Division were transferred to the Secretary of Education by sec. 301 of that Act (93 Stat. 677). Sections 401-403 of the General Education Provisions Act, in effect at the time of enactment of P.L. 96-88, are printed here for legislative history purposes.

[2] The Office of Assistant Secretary of Health, Education, and Welfare for Education was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 503, 93 Stat. 690. The previous functions of the Assistant Secretary for Education were transferred to the Secretary of Education by sec. 301 of that Act (93 Stat. 677).

THE OFFICE OF EDUCATION[1]

SEC. 403. (a) There shall be an Office of Education (hereinafter in this section referred to as the "Office") which shall be the primary agency of the Federal Government responsible for the administration of programs of financial assistance to educational agencies, institutions, and organizations. The Office shall have such responsibilities and authorities as may be vested in the Commissioner by law or delegated to the Commissioner in accordance with law.

(b) The Office shall be headed by the Commissioner of Education who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be subject to the direction and supervision of the Secretary.

(c)(1) The Office shall, consistent with such organization thereof which is provided by law, be divided into bureaus, and such bureaus shall be divided into divisions as the Commissioner determines appropriate.

(2)(A) There shall be regional offices of the Office established in such places as the Commissioner, after consultation with the Assistant Secretary, shall determine. Such regional offices shall carry out such functions as are specified in subparagraph (B).

(B) The regional offices shall serve as centers for the dissemination of information about the activities of the agencies in the Education Division and provide technical assistance to State and local educational agencies, institutions of higher education, and other educational agencies, institutions, and organizations and to individuals and other groups having an interest in Federal education activities.

(C) The Commissioner shall not delegate to any employee in any regional office any function which was not carried out, in accordance with regulations effective prior to June 1, 1973, by employees in such offices unless the delegation of such function to employees in regional offices is expressly authorized by law enacted after the enactment of the Education Amendments of 1974.[2]

(3) The Commissioner shall submit to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives not later than February 1 of each year a report on the personnel needs and assignments of the Office. Such report shall include a description (A) of the manner in which the Office is organized and the personnel of the Office are assigned to the various functions of that agency and (B) of personnel needs of that agency in order to enable it to carry out its functions, as authorized by law.

(d)(1) There shall be, in the Office of Education, an Office of Non-Public Education to insure the maximum potential participation of nonpublic school students in all Federal educational programs for which such children are eligible.

(2) The Office shall be headed by the Deputy Commissioner for Non-Public Education, who shall be appointed by the Commissioner.

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[1] The Office of Education was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 503, 93 Stat. 690. The previous functions of the Office of Education were transferred to the Secretary of Education by sec. 301 of that Act (93 Stat. 677).

[2] Sec. 503(b) of P.L. 93-380 provides that the provisions of limitation set forth in this subsection shall be retroactive to June 1, 1973.

(20 U.S.C. 1221c) Enacted June 23, 1972, P.L. 92-318, sec. 301(a)(2), 86 Stat. 327; amended August 21, 1974, P.L. 93-380, sec. 503(a), 88 Stat. 560, 561; amended October 12, 1976, P.L. 94-482, sec. 409(a), 90 Stat. 2233; amended Nov. 1, 1978, P.L. 95-561, sec. 1241, 92 Stat. 2351.

FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

SEC. 404. [Repealed by section 1001(c) of the Education Amendments of 1980 (94 Stat. 1491). Section 1001(a) of such Amendments reenacted the Fund for the Improvement of Postsecondary Education as title X of the Higher Education Act of 1965.]

NATIONAL INSTITUTE OF EDUCATION

SEC. 405. (a)(1) The Congress hereby declares it to be the policy of the United States to provide to every person an equal opportunity to receive an education of high quality regardless of his race, color, religion, sex, age, handicap, national origin, or social class. Although the American educational system has pursued this objective, it has not yet attained that objective. Inequalities of opportunity to receive high quality education remain pronounced. To achieve quality will require far more dependable knowledge about the processes of learning and education than now exists or can be expected from present research and experimentation in this field. While the direction of the education system remains primarily the responsibility of State and local governments the Federal Government has a clear responsibility to provide leadership in the conduct and support of scientific inquiry into the educational process.

(2) The Congress further declares it to be the policy of the United States to—

(i) help to solve or to alleviate the problems of, and promote the reform and renewal of American education;

(ii) advance the practice of education, as an art, science, and profession;

(iii) strengthen the scientific and technological foundations of education; and

(iv) build an effective educational research and development system.

(b)(1) In order to carry out the policy set forth in subsection (a), there is established the National Institute of Education (hereinafter referred to as the "Institute") which shall consist of a National Council on Educational Research (referred to in this section as the "Council") and a Director of the Institute (hereinafter referred to as the "Director"). The Institute shall have only such authority as may be vested therein by this section.

(2) The Institute shall, in accordance with the provisions of this section, seek to improve education in the United States through concentrating the resources of the Institute on the following priority research and development needs—

(A) improvement in student achievement in the basic educational skills, including reading and mathematics;

(B) overcoming problems of finance, productivity, and management in educational institutions;

(C) improving the ability of schools to meet their responsibilities to provide equal educational opportunities for students of limited English-speaking ability, women, and students who are socially, economically, or educationally disadvantaged;

(D) preparation of youths and adults for entering and progressing in careers;

(E) overcoming the special problems of the nontraditional student, including the older student (with special consideration for students over age 45) and the part-time student, and the institution which the student attends;

(F) encouraging the study of languages and cultures and addressing both national and international education concerns; and

(G) improved dissemination of the results of, and knowledge gained from, educational research and development, including assistance to educational agencies and institutions in the application of such results and knowledge.

In carrying out this paragraph, the Institute shall give attention to the needs of early adolescents and the schools which serve them.

(c)(1) The Council shall consist of fifteen members appointed by the President, by and with the advice and consent of the Senate, the Director, and such other ex officio members who are officers of the United States as the President may designate. A majority of the members of the Council (including ex officio members) shall constitute a quorum. The Chairman of the Council shall be designated from among its appointed members by the President. Ex officio members shall not have a vote on the Council. The members of the Council shall be appointed so that the Council shall be broadly representative of the general public; of the education professions, including practitioners and researchers; and of the various fields of education, including preschool, elementary and secondary, postsecondary, continuing, vocational, special, and compensatory education.

(2) The term of office of the members of the Council (other than ex officio members) shall be three years, except that (A) the members first taking office shall serve as designated by the President, five for terms of three years, five for terms of two years, and five for terms of one year, (B) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed, and (C) the term of office of each member shall expire on September 30 of the year in which such term would otherwise expire, unless a successor to such member has not been appointed and confirmed by the Senate by such date, in which case such member shall continue to serve until a successor has been appointed and confirmed. Any appointed member who has been a member of the Council for six consecutive years shall thereafter be ineligible for appointment to the Council during the two-year period following the expiration of such sixth year.

(3) The Council shall—

(A) establish general policies for, and review the conduct of, the Institute;

(B) advise the Assistant Secretary and the Director of the Institute on development of programs to be carried out by the Institute;

(C) present to the Assistant Secretary and the Director such recommendations as it may deem appropriate for the strengthening of educational research, the improvement of methods of collecting and disseminating the findings of educational research and of insuring the implementation of educational renewal and reform based upon the findings of educational research;

(D) conduct such studies as may be necessary to fulfill its functions under this section;

(E) prepare an annual report to the Assistant Secretary on the current status and needs of educational research in the United States;

(F) submit an annual report to the President on the activities of the Institute, and on education and educational research in general, (i) which shall include such recommendations and comments as the Council may deem appropriate, and (ii) shall be submitted to the Congress not later than March 31 of each year; and

(G) meet at the call of the Chairman, except that it shall meet (i) at least four times during each fiscal year, or (ii) whenever one-third of the members request in writing that a meeting be held.

The Director shall make available to the Council such information and assistance as may be necessary to enable the Council to carry out its functions. The Council may employ, without the approval of the Director, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, not to exceed seven technical and professional employees, as the Council deems necessary to carry out its functions.

(d)(1) The Director of the Institute shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5, United States Code, and shall perform such duties and exercise such powers and authorities as the Council, subject to the general supervision of the Assistant Secretary, may prescribe. The Director shall be responsible to the Assistant Secretary and shall report to the Secretary through the Assistant Secretary and not to or through any other offices of the Department of Health, Education, and Welfare. The Director shall not delegate any of his functions to any other officer who is not directly responsible to him.

(2) There shall be a Deputy Director of the Institute (referred to in this section as the "Deputy Director") who shall be appointed by the President and shall serve at the pleasure of the President. The Deputy Director shall be compensated at the rate provided for grade 18 of the General Schedule set forth in section 5332 of title 5, United States Code, and shall act for the Director during the absence or disability of the Director and exercise such powers and authorities as the Director may prescribe. The position created by this paragraph shall be in addition to the number of positions placed in grade 18 of the General Schedule under section 5108 of title 5, United States Code.

(e)(1) In order to carry out the objectives of the Institute, the Director is authorized, through the Institute, to conduct educational research; collect and disseminate the findings of educational research; train individuals in educational research; assist and foster such research; collection, dissemination, or training through grant, or technical assistance to, or jointly financed cooperative arrangements with, public or private organizations, institutions, agencies, or individuals; promote the coordination of such research and research support within the Federal Government; and may construct or provide (by grant or otherwise) for such facilities as he determines may be required to accomplish such purposes. As used in this subsection, the term "educational research" includes research (basic and applied), planning, surveys, evaluations, investigations, experiments, developments, and demonstrations in the field of education (including career education).

(2) Funds appropriated pursuant to subsection (b) for any fiscal year may be expended on projects and activities to disseminate (A) information on the results of educational research and development; and (B) other educational information. Projects and activities funded under this paragraph may include cooperative and jointly funded arrangements for such dissemination utilizing individuals who may be designated as "Education Extension Agents." Employment opportunities at the local level which are generated and funded through projects and activities carried out under the preceding sentence of this paragraph shall be made available to residents of the area to be served, if any such residents are qualified for, and apply for, such employment.

(3) The Director may establish and maintain research fellowships in the Institute, with such stipends and allowances, including travel and subsistence expenses, as the Director may deem necessary to procure the assistance of highly qualified research fellows from the United States and abroad.

(4) Not less than 90 per centum of the funds appropriated pursuant to subsection (h) for any fiscal year shall be expended to carry out this section through grants or contracts with qualified public or private agencies and individuals.

(5) The Director may appoint, for terms not to exceed three years, without regard to the provisions of title 5 of the United States Code governing appointment in the competitive service and may compensate without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, such technical or professional employees of the Institute as he deems necessary to accomplish its functions and also appoint and compensate without regard to such provisions not to exceed one-fifth of the number of full-time, regular technical or professional employees of the Institute.

(f)(1) In carrying out the functions of the Institute under this section, the Director shall, in accordance with the provisions of this subsection, make grants to, and enter into contracts with—

(A) regional educational laboratories established by public agencies or private nonprofit organizations; and

(B) research and development centers established by institutions of higher education or by interstate agencies established by compact which operate subsidiary bodies established to conduct postsecondary educational research and development.

(2) No grants shall be made and no contract entered into under this subsection unless—

(A) proposals for assistance under this subsection are solicited from regional educational laboratories and research and development centers by the Director;

(B) proposals for such assistance are developed by the regional educational laboratories and the research and development centers in consultation with the Director;

(C) proposals are submitted in an application, containing or accompanied by such information as is essential to carry out the provisions of this section, including assurances that the laboratory or center involved will—

(i) be responsible for the conduct of the research and development activities;

(ii) prepare a long-range plan relating to the conduct of such research and development activities;

(iii) insure that information developed as a result of such research and development activities, including new educational methods, practices, techniques, and products, be disseminated;

(iv) provide technical assistance to appropriate educational agencies and institutions; and

(v) to the extent practicable, provide training for individuals, emphasizing training opportunities for women and members of minority groups, in the use of new educational methods, practices, techniques, and products developed in connection with such activities; and

(D) the Director determines that the proposed activities will be consistent with the education research and development program and dissemination activities which are being conducted by the Institute.

(3) No regional educational laboratory or research and development center receiving assistance under this subsection shall by reason of the receipt of such assistance be ineligible to receive any other assistance from the Institute authorized by law.

(g)(1) There is established within the Institute a Federal Council on Educational Research and Development (hereinafter in this subsection referred to as the "Federal Council").

(2) The Federal Council shall be composed of representatives of Federal agencies engaged in research and development relating to education, and shall include, but not be limited to, a representative designated by the Secretary of Defense, a representative designated by the Secretary of Labor, the Director of the National Institutes of Education, the Director of the National Institute of Health, the Director of the National Science Foundation, the Director of the Office of Child Development of the Department of Health, Education, and Welfare, and the Commissioner of Education.

(3) The President shall designate the Director of the Institute to be the Chairman of the Federal Council.

(4) The President shall appoint additional representatives of Federal agencies and may alter the membership of the Federal Council from time to time as he considers necessary to meet changes in Federal programs or in the organization of the executive branch of the Federal Government

(5) The Federal Council shall—

(A) advise, and consult with, the Director of the Institute with respect to major problems arising in connection with carrying out the purposes of the Institute;

(B) promote coordination between the programs and activities of the Institute and related programs and activities of other Federal agencies, including the joint support of activities to the extent such support is appropriate;

(C) make an annual report to the Congress and the President on the status of educational research and development in the United States, including (i) a catalog of federally assisted programs in educational research and development; (ii) a report of the most significant findings of such research and development; and (iii) recommendations with respect to the manner in which such Federal research and development efforts may be improved; and

(D) make recommendations to the Congress and the President with respect to effective means for the dissemination throughout the United States of information relating to educational research and development, and carry out an assessment of existing efforts used by Federal agencies for the dissemination of such information.

(h)(1) In conducting educational research under subsection (e) which deals with specific education programs or the target populations of such programs, the Director shall consult with the appropriate administrators of such programs within appropriate Federal agencies.

(2) The head of any Federal agency which conducts educational research or provides financial assistance for such research shall consult with the Director with respect to the design of programs of such research.

(i) Where funds are advanced for a single project by more than one Federal agency for the purposes of this section, the National Institute of Education may act for all in administering the funds advanced.

(j)(1) There are authorized to be appropriated to carry out the provisions of this section $120,000,000 for fiscal year 1981, $130,000,000 for fiscal year 1982, $145,000,000 for fiscal year 1983, $160,000,000 for fiscal year 1984, and $175,000,000 for fiscal year 1985.

(2) Sums so appropriated shall, notwithstanding any other provision of law unless enacted in express limitation of this subsection, remain available for the purposes of this subsection unless expended.

(k)(1) In addition to other responsibilities of the Institute under this section, the Institute shall carry out, by grant to or cooperative agreement (subject to the provisions of the Federal Grant and Cooperative Agreement Act of 1977) with a nonprofit education organization, a National Assessment of Educational Progress which shall have as a primary purpose the assessment of the performance of children and young adults in the basic skills of reading, mathematics, and communication. Such a National Assessment shall—

(A) collect and report at least once every five years data assessing the performance of students at various age or grade levels in each of the areas of reading, writing, and mathematics;

(B) report periodically data on changes in knowledge and skills of such students over a period of time;

(C) conduct special assessments of other educational areas, as the need for additional national information arises;

(D) provide technical assistance to State educational agencies and to local educational agencies on the use of National Assessment objectives, primarily pertaining to the basic skills of reading, mathematics, and communication, and on making comparisons of such assessments with the national profile and change data developed by the National Assessment; and

(E) with respect to each State which voluntarily participates in accordance with paragraph (5), provide for a statement of information collected by the National Assessment for each such State.

(2)(A) The education organization through which the Institute carries out the National Assessment shall be responsible for overall management of the National Assessment. Such organization shall delegate authority to design and supervise the conduct of the National Assessment to an Assessment Policy Committee established by such organization. The Assessment Policy Committee shall be composed of—

(i) five members appointed by the education organization of whom two members shall be representatives of business and industry and three members shall be representatives of the general public, and

(ii) twelve members appointed by the education organization from the categories of membership specified in subparagraph (B).

(B) Members of the Assessment Policy Committee appointed in accordance with division (ii) of subparagraph (A) shall be—

(i) one chief State school officer;
(ii) two State legislators;
(iii) two school district superintendents;
(iv) one chairman of a State board of education;
(v) one chairman of a local school board;
(vi) one Governor of a State; and
(vii) four classroom teachers.

(C) The Director of the Institute shall serve as an ex officio member of the Assessment Policy Committee. The Director shall also appoint a member of the National Council on Education Research to serve as a nonvoting member of the Assessment Policy Committee.

(D) Members appointed in accordance with divisions (i) and (ii) of subparagraph (A) shall be appointed for terms of three years, except that (i) in the case of members appointed for fiscal year 1979, one third of the membership shall be appointed for terms of one year each and one third shall be appointed for terms of two years each, and (ii) appointments to fill vacancies shall be for such terms as remain unexpired. No member shall be appointed to serve more than two consecutive terms.

(3) The Assessment Policy Committee established by paragraph (2) shall be responsible for the design of the National Assessment, including the selection of the learning areas to be assessed, the development and selection of goal statements and assessment items, the assessment methodology, the form and content of the reporting

and dissemination of assessment results, and studies to evaluate and improve the form and utilization of the National Assessment. The appropriateness of all cognitive, background, and attitude items developed as part of the National Assessment shall be the responsibility of the Assessment Policy Committee. Such items shall be subject to review by the Department of Education and the Office of Management and Budget for a single period of not more than 60 days.

(4) Each learning area assessment shall have goal statements devised through a national consensus approach, providing for active participation of teachers, curriculum specialists, subject matter specialists, local school administrators, parents, and concerned members of the general public. All items selected for use in the assessment shall be reviewed to exclude items which might reflect racial, sex, cultural, or regional bias.

(5) Participation in the National Assessment by State and local educational agencies selected as part of a sample of such agencies shall be voluntary.

(6) The Director of the Institute shall provide for a review of the National Assessment at least once every three years. This review shall provide an opportunity for public comment on the conduct and usefulness of National Assessment and shall result in a report to the Congress and to the Nation on the findings and recommendations, if any, stemming from the review.

(7) There are authorized to be appropriated $8,000,000 for fiscal year 1985, and $10,800,000 for each succeeding fiscal year ending prior to October 1, 1989, to carry out the provisions of this subsection.

(l) For purposes of this section, the terms "United States" and "State" include the District of Columbia and Puerto Rico.

(20 U.S.C. 1221e) Enacted June 23, 1972, P.L. 92-318, sec. 301(a)(2), 86 Stat. 328, 332; amended August 21, 1974, P.L. 93-380, sec. 502(b)(2)(B), 88 Stat. 560; amended October 12, 1976, P.L. 94-482, sec. 403, 90 Stat. 2227, 2228, 2229, 2230; amended Nov. 1, 1978, P.L. 95-561, sec. 1242, 92 Stat. 2352, 2353; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Oct. 3, 1980, P.L. 96-374, sec. 1311-1314, 94 Stat. 1498, 1499; amended Oct. 19, 1984, P.L. 98-511, secs. 702(a), 703, 704(a), 98 Stat. 2405, 2406.

NATIONAL CENTER FOR EDUCATION STATISTICS

SEC. 406. (a) There is established, within the Office of the Assistant Secretary, a National Center for Education Statistics (hereafter in this section referred to as the "Center"). The Center shall be headed by an Administrator who shall be appointed by the Assistant Secretary in accordance with the provisions of title 5, United States Code, relating to appointments in the competitive service.

(b) The purpose of the Center shall be to collect and disseminate statistics and other data related to education in the United States and in other nations. The Center shall—

(1) collect, collate, and, from time to time, report full and complete statistics on the conditions of education in the United States;

(2) conduct and publish reports on specialized analyses of the meaning and significance of such statistics;

(3) assist State and local educational agencies, including State agencies responsible for postsecondary education, in im-

proving and automating their statistical and data collection activities;

(4) review and report on educational activities in foreign countries; and

(5) conduct a continuing survey of institutions of higher education and local educational agencies to determine the demand for, and the availability of, qualified teachers and administrative personnel, especially in critical areas within education which are developing or are likely to develop, and assess the extent to which programs administered in the Education Division are helping to meet the needs identified as a result of such continuing survey.

(c)(1) There shall be an Advisory Council on Education Statistics which shall be composed of 7 members appointed by the Secretary and such ex officio members as are listed in subparagraph (2). Not more than 4 of the appointed members of the Council may be members of the same political party.

(2) The ex officio members of the Council shall be—

(A) the Commissioner of Education,

(B) the Director of the National Institute of Education,

(C) the Director of the Census, and

(D) the Commissioner of Labor Statistics.

(3) Appointed members of the Council shall serve for terms of 3 years, as determined by the Secretary, except that in the case of initially appointed members of the Council, they shall serve for shorter terms to the extent necessary that the terms of office of not more than 3 members expire in the same calendar year.

(4) The Assistant Secretary shall serve as the non-voting presiding officer of the Council.

(5)(A) The Council shall meet at the call of the presiding officer, except that it shall meet—

(i) at least four times during each calendar year; and

(ii) in addition, whenever three voting members request in writing that the presiding officer call a meeting.

(B) Six members of the Council shall constitute a quorum of the Council.

(6) The provisions of section 448(b) of part D of this title shall not apply to the Council established under this subsection.

(7) The Council shall review general policies for the operation of the Center and shall be responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence.

(d)(1) The Assistant Secretary shall, not later than June 1 of each year, submit to the Congress an annual report which—

(A) contains a description of the activities of the Center during the then current fiscal year and a projection of its activities during the succeeding fiscal year;

(B) sets forth estimates of the cost of the projected activities for such succeeding fiscal year;

(C) includes a statistical report on the condition of education in the United States during the two preceding fiscal years and a projection, for the three succeeding fiscal years, of estimated statistics related to education in the United States; and

(D) clearly sets forth areas of critical need for additional qualified education personnel in local education agencies and, after discussion and review by the Advisory Council on Education Statistics, identifies priorities within projected areas of need, and includes recommendations of the Council with respect to the most effective manner in which the Nation and the Federal Government may address such needs.

(2) The Center shall develop and enforce standards designed to protect the confidentiality of persons in the collection, reporting, and publication of data under this section. This subparagraph shall not be construed to protect the confidentiality of information about institutions, organizations, and agencies receiving grants from or having contracts with the Federal Government.

(e) In order to carry out the objectives of the Center, the Assistant Secretary is authorized, either directly or by grant or contract, to carry out the purposes set forth in subsection (b), and for that purpose the Assistant Secretary is authorized to make grants to, and contracts with public and private institutions, agencies, organizations and individuals.

(f)(1)(A) The Center is authorized to furnish transcripts or copies of tables and other statistical records of the Office of Education, the Assistant Secretary, and the National Institute of Education to, and to make special statistical compilations and surveys for, State or local officials, public and private organizations, or individuals. The Center shall furnish such special statistical compilations and surveys as the Committees on Labor and Human Resources and on Appropriations of the Senate and the Committees on Education and Labor and on Appropriations of the House of Representatives may request. Such statistical compilations and surveys, other than those carried out pursuant to the preceding sentence, shall be made subject to the payment of the actual or estimated cost of such work. In the case of nonprofit organizations or agencies, the Assistant Secretary may engage in joint statistical projects, the cost of which shall be shared equitably as determined by the Assistant Secretary: *Provided*, That the purposes of such projects are otherwise authorized by law.

(B) All funds received in payment for work or services enumerated under subparagraph (A) shall be deposited in a separate account which may be used to pay directly the costs of such work or services, to repay appropriations which initially bore all or part of such costs, or to refund excess sums when necessary.

(2)(A) The Center shall participate with other Federal agencies having a need for educational data in forming a consortium for the purpose of providing direct joint access with such agencies to all educational data received by the Center through automated data processing. The Library of Congress, General Accounting Office, and the Committees on Labor and Human Resources and Appropriations of the Senate and the Committees on Education and Labor and Appropriations of the House of Representatives shall, for the purposes of this subparagraph, be considered Federal agencies.

(B) The Center shall, in accordance with regulations published for the purpose of this paragraph, provide all interested parties, including public and private agencies and individuals, direct access to data collected by the Center for purposes of research and acquiring statistical information.

(3) The Commissioner and the National Institute of Education are directed to cooperate with the Center and make such records and data available to the Center as may be necessary to enable the Center to carry out its functions under this subsection.

(g)(1) The amount available for salaries and expenses of the Center shall not exceed $5,000,000 for the fiscal year ending June 30, 1975, $10,000,000 for the fiscal year ending June 30, 1976, and $14,000,000 for each of the fiscal years ending prior to October 1, 1989.

(2) The amount available for grants and contracts by the Assistant Secretary under subsection (e) shall not exceed $10,000,000 for fiscal year 1985, $12,000,000 for fiscal year 1986, $14,000,000 for fiscal year 1987, $16,000,000 for fiscal year 1988, and $18,000,000 for fiscal year 1989.

(3) Sums appropriated for activities and expenses of the Center which are not limited by paragraph (2) of this subsection shall be appropriated apart from appropriations which are so limited, as separate line items.

(h)(1) In addition to its other responsibilities, the National Center for Education Statistics shall, in consultation with the Department of Education, collect uniform data from the States on financing of elementary and secondary education. Each State receiving funds under the Elementary and Secondary Education Act of 1965 shall cooperate with the National Center in this effort.

(2)(A) The National Center shall, in consultation with the Department of Education, publish by no later than September 30, 1979, and by no later than September 30 of each second fiscal year thereafter, a composite profile of each State showing the degree to which each has achieved equalization of resources for elementary and secondary education among the school districts within the State. A summary of these profiles shall show this equalization among the States.

(B) In compiling the profiles required by this paragraph, the National Center shall list the degree of equalization both within and among the States according to the following standards:

(i) the disparity in expenditures among school districts;

(ii) the disparity from wealth neutrality; and

(iii) such other measures as the National Center considers appropriate, including a consideration of price differentials and pupil-teacher ratios.

(3) There are authorized to be appropriated such sums as may be necessary for any fiscal year to assist the National Center in carrying out its responsibilities under this subsection.

(i) For purposes of this section, the terms "United States" and "State" include the District of Columbia and Puerto Rico.

(20 U.S.C. 1221e-1) Enacted August 21, 1974, P.L. 93-380, sec. 501(a), 88 Stat. 556, 558, amended April 21, 1976, P.L. 94-273, sec. 12(1), 90 Stat. 378, amended October 12, 1976, P.L. 94-482, sec. 401(c), 90 Stat. 2226, sec. 406, 90 Stat. 2231, 2232; sec. 501(g), 90 Stat. 2238, amended Nov. 1, 1978, P.L. 95-561, secs. 1201, 1212(a), (c), 1213(a), 92 Stat. 2333, 2334, 2338, 2341, 2353; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677, amended Oct. 19, 1984, P.L. 98-511, secs. 702(b), 704(b), 98 Stat. 2406.

RESPONSIBILITY OF STATES TO FURNISH INFORMATION

SEC. 406A. (a) The Commissioner shall require that each State submit to him, within ninety days after the end of any fiscal year, a report on the uses of Federal funds in that State under any applicable program for which the State is responsible for administration. Such report shall—

(1) list all grants and contracts made under such program to the local educational agencies and other public and private agencies and institutions within such State during such year;

(2) include the total amount of funds available to the State under each such program for such fiscal year and specify from which appropriation Act or Acts these funds were available; and

(3) be made readily available by the State to local educational agencies and other public and private agencies and institutions within the State, and to the public.

(b) On or before March 31 of each year, the Commissioner shall submit to the Committee on Labor and Human Resources of the Senate and to the Committee on Education and Labor of the House of Representatives an analysis of these reports and a compilation of statistical data derived therefrom.

(20 U.S.C. 1232f) Enacted August 21, 1974, P.L. 93-380, sec. 512(a), 88 Stat. 571; amended April 21, 1976, P.L. 94-273, sec. 17, 90 Stat. 379; amended October 12, 1976, P.L. 94-482, sec. 501(f)(2), (f)(3), 90 Stat. 2237; redesignated Nov. 1, 1978, P.L. 95-561, sec. 1231(a)(2), 92 Stat. 2342; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended December 8, 1983, P.L. 97-211, sec. 18, 97 Stat. 1417.

AUTHORIZATION OF APPROPRIATIONS FOR SCIENCE EDUCATION PROGRAMS

SEC. 406A. There is authorized to be appropriated to the Secretary of Education for fiscal year 1981—

(1) $2,500,000 for the purpose of carrying out the Pre-College Science Teacher Training program, and

(2) $5,000,000 for the purpose of carrying out the Minority Institutions Science Improvement program transferred to the Secretary from the National Science Foundation by section 304 of the Department of Education Organization Act.

(20 U.S.C. 1221e-1a) Enacted October 3, 1980, P.L. 96-374, sec. 1303, 94 Stat. 1497.

RULES FOR EDUCATION OFFICERS OF THE UNITED STATES

SEC. 407. (a) For the purposes of this section, the term "education officer of the United States" means any person appointed by the President pursuant to this part, except members of commissions, councils, and boards.

(b) Each education officer of the United States shall serve at the pleasure of the President.

(c) No education officer of the United States shall engage in any other business, vocation, or employment while serving in the position to which he is appointed; nor may he, except with the express approval of the President in writing, hold any office in, or act in any capacity for, or have any financial interest in, any organization, agency, or institution to which an agency in the Education Division makes a grant or with which any such agency makes a contract or any other financial arrangement.

(d) No person shall hold, or act for, more than one position as an education officer of the United States for more than a 30 day period.

(20 U.S.C. 1221e-2) Enacted August 21, 1974, P.L. 93-380, sec. 502(a)(1), 88 Stat. 559

GENERAL AUTHORITY OF ADMINISTRATIVE HEADS OF EDUCATION AGENCIES

SEC. 408. (a) Each administrative head of an education agency, in order to carry out functions otherwise vested in him by law or by delegation of authority pursuant to law, is, subject to limitations as may be otherwise imposed by law, authorized—

(1) to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by the agency of which he is head;

(2) in accordance with those provisions of title 5, United States Code, relating to the appointment and compensation of personnel and subject to such limitations as are imposed in this part, to appoint and compensate such personnel as may be necessary to enable such agency to carry out its functions;

(3) to accept unconditional gifts or donations of services, money, or property (real, personal, or mixed; tangible or intangible);

(4) without regard for section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary for the conduct of such agency;

(5) with funds expressly appropriated for such purpose, to construct such facilities as may be necessary to carry out functions vested in him or in the agency of which he is head, and to acquire and dispose of property; and

(6) to use the services of other Federal agencies and reimburse such agencies for such services.

(b) The administrative head of an education agency shall ensure that, in contracting under the authority of this section for the services of independent persons in the competitive review of grant applications, all such persons are qualified, by education and experience, to perform such services. The qualifications of such persons and the terms of such contracts, other than information which identify such person, shall be readily made available to the public.

(c) Any administrative head of an education agency is, subject to any other limitations on delegations of authority provided by law, authorized to delegate any of his functions under this section to an officer or employee of that agency.

(d) For the purposes of this title, the term "administrative head of an education agency" means the Commissioner and the Director of the National Institute of Education. To the extent that the Assistant Secretary is directly responsible for the administration of a program and to the extent that the Assistant Secretary is responsible for the supervision of the National Center for Education Statistics, the Assistant Secretary shall, for such purposes, be considered within the meaning of such term.

(20 U.S.C. 1221e-3) Enacted August 21, 1974, P.L. 93-380, sec. 502(a)(1), 88 Stat. 559, 560; amended Nov. 1, 1978, P.L. 95-561, secs. 1243(b), (c), 1244, 92 Stat. 2353; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

EDUCATION IMPACT STATEMENT

SEC. 409. Notwithstanding any other provision of law, no regulation affecting any institution of higher education in the United States, promulgated on or after the date of enactment of this Act, shall become effective unless such agency causes to be published in the Federal Register a copy of such proposed regulation together with an educational impact assessment statement which shall determine whether any information required to be transmitted under such regulation is already being gathered by or is available from any other agency or authority of the United States. Notwithstanding the exception provided under section 553(b) of title 5, United States Code, such statement shall be based upon the record established under the provisions of section 553 of title 5, United States Code, compiled during the rulemaking proceeding regarding such regulation.

(20 U.S.C. 1221e-4) Enacted October 3, 1980, P.L. 96-374, sec. 1306, 94 Stat. 1498.

PART B—APPROPRIATIONS AND EVALUATIONS

Subpart 1—Appropriations

ADVANCE FUNDING

SEC. 411. To the end of affording the responsible State, local, and Federal officers concerned adequate notice of available Federal financial assistance for education, appropriations for grants, contracts, or other payments under any applicable program are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding that its initial application under such program will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(20 U.S.C. 1223) Enacted Jan. 2, 1968, P.L. 90-247, sec. 403, 81 Stat. 814; amended April 13, 1970, P.L. 92-230, sec. 401(a)(4), 84 Stat. 165; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated August 21, 1974, P.L. 93-380, sec. 506(a)(1)(C), 88 Stat. 562.

AVAILABILITY OF APPROPRIATIONS ON ACADEMIC OR SCHOOL YEAR BASIS

SEC. 412. (a) Appropriations for any fiscal year for grants, loans, contracts, or other payments to educational agencies or institutions under any applicable program may, in accordance with regulations of the Secretary, be made available for expenditure by the agency or institution concerned on the basis of an academic or school year differing from such fiscal year.

(b) Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds from appropriations to carry out any programs to which this title is applicable during any fiscal year which are not obligated and expended by educational agencies or institutions prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure by such agencies and institutions during such succeeding fiscal year.

(2) Any funds under any applicable program which, pursuant to paragraph (1), are available for obligation and expenditure in the year succeeding the fiscal year for which they were appropriated shall be obligated and expended in accordance with—

(A) the Federal statutory and regulatory provisions relating to such program which are in effect for such succeeding fiscal year, and

(B) any program plan or application submitted by such educational agencies or institutions for such program for such succeeding fiscal year.

(c) If any funds appropriated to carry out any applicable program are not obligated pursuant to a spending plan submitted in accordance with section 3679(d)(2) of the Revised Statutes and become available for obligation after the institution of a judicial proceeding seeking the release of such funds, then such funds shall be available for obligation and expenditure until the end of the fiscal year which begins after the termination of such judicial proceeding.

(20 U.S.C. 1225) Enacted Jan. 2, 1968, P.L. 90-247, sec. 405, 81 Stat. 815; amended April 13, 1970, P.L. 91-230, sec. 401(a)(5), (7), (8), 84 Stat. 165; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326, redesignated and amended, August 21, 1974, P.L. 93-380, sec. 506(a)(1), 88 Stat. 562, 563; amended April 21, 1976, P.L. 94-273, sec. 3(12), 90 Stat. 376; amended Sept. 24, 1977, P.L. 95-112, sec. 5, 91 Stat. 912; amended Nov. 1, 1978, P.L. 95-561, sec. 1245, 92 Stat. 2354.

AVAILABILITY OF APPROPRIATIONS

SEC. 413. Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this title, funds appropriated for any fiscal year to carry out any of the programs to which this title is applicable shall remain available for obligation and expenditure until the end of such fiscal year.

(20 U.S.C. 1226) Enacted Oct. 16, 1968, P.L. 90-576, sec. 301(b), 82 Stat. 1091, amended April 13, 1970, P.L. 91-230, sec. 401(a)(9), 84 Stat. 166; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 93-380, sec. 506(a)(2), 88 Stat. 563.

CONTINGENT EXTENSION OF PROGRAMS

SEC. 414.[1] (a) Unless the Congress in the regular session which ends prior to the beginning of the terminal fiscal year—

(1) of the authorization of appropriations for an applicable program; or

(2) of the duration of an applicable program;

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[1] Section 427 of Part B of Title III of P.L. 94-482 provides as follows:

The provisions of section 414 of the General Education Provisions Act, relating to the contingent extension of applicable programs, shall not apply to the Indochina Refugee Children Assistance Act of 1976 or to any program of financial assistance for educational purpose for Indochinese refugee children.

either—

(A) has passed or has formally rejected legislation which would have the effect of extending the authorization or duration (as the case may be) of that program; or

(B) by action of either the House of Representatives or the Senate, approves a resolution stating that the provisions of this section shall no longer apply to such program;

such authorization or duration is hereby automatically extended for—

(i) two additional fiscal years for any applicable program authorized to be included in the Appropriation Act for the fiscal year preceding the fiscal year for which appropriations are available for obligation, or

(ii) one additional fiscal year for any other applicable program

The amount appropriated for each additional year shall not exceed the amount which the Congress could, under the terms of the law for which the appropriation is made, have appropriated for such program during such terminal year.

(b)(1) For the purposes of clause (A) of subsection (a), the Congress shall not have been deemed to have passed legislation unless such legislation becomes law.

(2) In any case where the Commissioner is required under an applicable statute to carry out certain acts or make certain determinations which are necessary for the continuation of an applicable program, if such acts or determinations are required during the terminal year of such program, such acts and determinations shall be required during any fiscal year in which that part of subsection (a) which follows clause (B) thereof is in operation.

(20 U.S.C. 1226a) Enacted August 21, 1974, P.L. 93-380, Sec. 506(a)(2), 88 Stat. 563; amended October 3, 1980, P.L. 96-374, sec. 1301, 94 Stat. 1496; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

PAYMENTS

Sec. 415. Payments pursuant to grants or contracts under any applicable program may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Commissioner may determine.

(20 U.S.C. 1232d) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 170; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated Nov. 1, 1978, P.L. 95-561, sec. 1231(a)(1), 92 Stat. 2342; amended by general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

Subpart 2—Planning and Evaluation of Federal Education Activities

PROGRAM PLANNING AND EVALUATION

Sec. 416. Sums appropriated pursuant to section 400(d) may include for any fiscal year for which appropriations are otherwise authorized under any applicable program not to exceed $25,000,000 which shall be available to the Secretary, in accordance with regulations prescribed by him, for expenses, including grants, contracts, or other payments, for (1) planning for the succeeding year for any such program, and (2) evaluation of such programs.

(20 U.S.C. 1226b) Enacted August 21, 1974, P.L. 93-380, sec. 506(a)(3)(C), 88 Stat. 563, 564.

ANNUAL EVALUATION REPORTS

SEC. 417. (a) Not later than December 31 of each year, the Secretary shall transmit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate an annual evaluation report which evaluates the effectiveness of applicable programs (including compliance with provisions of law requiring the maintenance of non-Federal expenditures for the purposes of such applicable programs) in achieving their legislated purposes together with recommendations relating to such programs for the improvement of such programs which will result in greater effectiveness in achieving such purposes. In the case of any evaluation report evaluating specific programs and projects, such report shall—

(A) set forth goals and specific objectives in qualitative and quantitative terms for all programs and projects assisted under the applicable program concerned and relate those goals and objectives to the purposes of such program;

(B) contain information on the progress being made during the previous fiscal year toward the achievement of such goals and objectives;

(C) describe the cost and benefits of the applicable program being evaluated during the previous fiscal year and identify which sectors of the public receive the benefits of such program and bear the costs of such program;

(D) contain plans for implementing corrective action and recommendations for new or amended legislation where warranted;

(E) contain a listing identifying the principal analyses and studies supporting the major conclusions and recommendations in the report; and

(F) be prepared in concise summary form with necessary detailed data and appendices, including tabulations of available data to indicate the effectiveness of the programs and projects by the sex, race, and age of its beneficiaries.

(2)[1] Repealed.

(b) Each evaluation report submitted pursuant to subsection (a) shall contain: (1) a brief description of each contract or grant for evaluation of any program (whether or not such contract or grant was made under section 416) any part of the performance of which occurred during the preceding year, (2) the name of the firm or individual who is to carry out the evaluation, and (3) the amount to be paid under the contract or grant.

(20 U.S.C. 1226c) Enacted August 21, 1974, P.L. 93-380, sec. 506(a)(3)(C), 88 Stat. 564, amended Nov. 1, 1978, P.L. 95-561, sec. 1246(a), (b), 92 Stat. 2354; amended Aug. 6, 1979, P.L. 96-46, sec. 4(b), 93 Stat. 342 (effective Oct. 1, 1978), amended October 3, 1980, P.L. 96-374, sec. 1305, 94 Stat. 1497, amended October 19, 1984, P.L. 98-511, sec. 705, 98 Stat. 2406.

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[1] Paragraph (2) of section 417(a) was repealed Aug. 6, 1979, P.L. 96-46, sec. 4(b), 93 Stat. 342 (effective Oct. 1, 1978).

RENEWAL EVALUATION REPORTS

SEC. 418. (a) In the case of any applicable program for which—

(1) the authorization of appropriations expires; or

(2) the time during which payments or grants are to be made expires;

not later than one year prior to the date of such expiration, the Assistant Secretary shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a comprehensive evaluation report on such program.

(b) Any comprehensive evaluation report submitted pursuant to subsection (a) shall contain—

(1) a history of the program concerned, including—

(A) a history of authorizations of appropriations, budget requests, appropriations, and expenditures (including, where applicable, State and local expenditures) for such programs;

(B) a history of legislative recommendations with respect to such program made by the President and the disposition of such recommendations, and

(C) a history of legislative changes made in applicable statutes with respect to such program;

(2) assuming a continuation of such program, recommendations for improvements (including legislative changes and funding levels) in such program with a view toward achieving the legislative purposes of such program;

(3) a compilation and summary of all evaluations of such program; and

(4) a recommendation with respect to whether such program should be continued, and the date of its expiration, and the reasons for such recommendations.

(20 U.S.C. 1226d) Enacted August 21, 1974, P.L. 93-380, sec. 506(a)(3)(C), 88 Stat. 564, 565; amended Nov. 1, 1978, P.L. 95-561, sec. 1246(c), 92 Stat. 2354; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

EVALUATION BY THE COMPTROLLER GENERAL

SEC. 419. (a) The Comptroller General of the United States shall review, audit, and evaluate any Federal education program upon request by a committee of the Congress having jurisdiction of the statute authorizing such program or, to the extent personnel are available, upon request by a member of such committee. Upon such request, he shall (1) conduct studies of statutes and regulations governing such program; (2) review the policies and practices of Federal agencies administering such program; (3) review the evaluation procedures adopted by such agencies carrying out such program; and (4) evaluate particular projects or programs. The Comptroller General shall compile such data as are necessary to carry out the preceding functions and shall report to the Congress at such times as he deems appropriate his findings with respect to such program and his recommendations for such modifications in existing laws, regulations, procedures and practices as will in his judgment best serve to carry out effectively and without duplication the policies set forth in education legislation relative to such program.

(b) In carrying out his responsibilities as provided in subsection (a), the Comptroller General shall give particular attention to the practice of Federal agencies of contracting with private firms, organizations, and individuals for the provision of a wide range of studies and services (such as personnel recruitment and training, program evaluation, and program administration) with respect to Federal education programs, and shall report to the heads of the agencies concerned and to the Congress his findings with respect to the necessity for such contracts and their effectiveness in serving the objectives established in education legislation.

(c) In addition to the sums authorized to be appropriated under section 400(d), there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(20 U.S.C. 1227) Enacted June 23, 1972, P.L. 92-318, sec. 304, 86 Stat. 333.

PROHIBITION AGAINST USE OF APPROPRIATED FUNDS FOR BUSING

SEC. 420. No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except for funds appropriated pursuant to title I of the Act of September 30, 1950 (Public Law 874, 81st Congress), but not including any portion of such funds as are attributable to children counted under subparagraph (C) of section 3(d)(2) or section 403(1)(C) of that Act.

(20 U.S.C. 1228) Enacted August 21, 1974, P.L. 93-380, sec. 252, 88 Stat. 519.

PART C—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING THE OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS; GENERAL AUTHORITY OF THE COMMISSIONER OF EDUCATION

APPLICABILITY

SEC. 421. The provisions of this part (except as otherwise provided) shall apply to any program for which the Commissioner has administrative responsibility, as specified by law or by delegation of authority pursuant to law.

(20 U.S.C. 1230) Enacted August 21, 1974, P.L. 93-380, sec. 507(a), 88 Stat. 565; amended October 12, 1976, P.L. 94-482, sec. 404(a), 90 Stat. 2230; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

SUBPART 1—GENERAL AUTHORITY

ADMINISTRATION OF EDUCATION PROGRAMS

SEC. 421A. (a) The Commissioner is authorized to delegate any of his functions under any applicable program, except the making of regulations and the approval of State plans, to any officer or employee of the Office of Education.

(b) In administering any applicable program, the Commissioner is authorized to utilize the services and facilities of any agency of the Federal Government and of any other public or nonprofit agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement, as may be agreed upon.

(c)[1] (1)(A) Except in the case of a law which—

(i) authorizes appropriations for carrying out, or controls the administration of, an applicable program, or

(ii) is enacted in express limitation of the provisions of this paragraph,

no provision of any law shall be construed to authorize the consolidation of any applicable program with any other program. Where the provisions of law governing the administration of an applicable program permit the packaging or consolidation of applications for grants or contracts to attain simplicity or effectiveness of administration, nothing in this subparagraph shall be deemed to interfere with such packaging or consolidation.

(B) No provision of any law which authorizes an appropriation for carrying out, or controls the administration of, an applicable program shall be construed to authorize the consolidation of any such program with any other program unless provision for such a consolidation is expressly made thereby.

(C) For the purposes of this subsection, the term "consolidation" means any agreement, arrangement, or the other procedure which results in—

(i) the commingling of funds derived from one appropriation with those derived from another appropriation,

(ii) the transfer of funds derived from an appropriation to the use of an activity not authorized by the law authorizing such appropriation,

(iii) the use of practices or procedures which have the effect of requiring, or providing for, the approval of an application for funds derived from different appropriations according to any criteria other than those for which provision is made (either expressly or implicitly) in the law which authorizes the appropriation of such funds, or this title, or

(iv) as a matter of policy the making of a grant or contract involving the use of funds derived from one appropriation dependent upon the receipt of a grant or contract involving the use of funds derived from another appropriation.

(2)(A) No requirement or condition imposed by a law authorizing appropriations for carrying out any applicable program, or controlling the administration thereof, shall be waived or modified, unless such a waiver or modification is expressly authorized by such law or by a provision of this title or by a law expressly limiting the applicability of this paragraph.

(B) There shall be no limitation on the use of funds appropriated to carry out any applicable program other than limitations imposed by the law authorizing the appropriation or a law controlling the administration of such program; nor shall any funds appropriated to carry out an applicable program be allotted, apportioned, allocated, or otherwise distributed in any manner or by any method different from that specified in the law authorizing the appropriation.

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[1] Section 302(c) of P.L. 92-318 provides as follows:

"(c) The provisions of section 421(c) of the General Education Provisions Act shall be effective upon the date of enactment of this Act. No provision of any law which is inconsistent with such section 421(c) shall be effective nor shall any such provision control to the extent of such inconsistency, unless such a law is enacted after the date of enactment of this Act."

(3) No person holding office in the executive branch of the Government shall exercise any authority which would authorize or effect any activity prohibited by paragraph (1) or (2).

(4) The transfer of any responsibility, authority, power, duty, or obligation subject to this title, from the Commissioner to any other officer in the executive branch of the Government, shall not affect the applicability of this title with respect to any applicable program.

(20 U.S.C. 1231) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 166; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 321; amended June 23, 1972, P.L. 92-318, sec. 302(a), 86 Stat. 332, 333; heading of sec. 421 redesignated June 23, 1972, P.L. 92-318, sec. 302(b), 86 Stat. 333; redesignated August 21, 1974, P.L. 93-380, sec. 507(a), 88 Stat. 565; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

COLLECTION AND DISSEMINATION OF INFORMATION

SEC. 422. (a) The Commissioner shall—

(1) prepare and disseminate to State and local educational agencies and institutions information concerning applicable programs and cooperate with other Federal officials who administer programs affecting education in disseminating information concerning such programs;

(2) inform the public on federally supported education programs;

(3) collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their purposes; and

(4) prepare and publish an annual report (to be referred to as "the Commissioner's annual report") on (A) the condition of education in the Nation, (B) developments in the administration, utilization, and impact of applicable programs, (C) results of investigations and activities by the Office of Education, and (D) such facts and recommendations as will serve the purpose for which the Office of Education is established (as set forth in section 403 of this Act).

(b) The Commissioner's annual report shall be submitted to the Congress not later than June 30 of each calendar year. The Commissioner's annual report shall be made available to State and local educational agencies and other appropriate agencies and institutions and to the general public.

(c) The Commissioner is authorized to enter into contracts with public or private agencies, organizations, groups, or individuals to carry out the provisions of this section.

(20 U.S.C. 1231a) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 166; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended June 23, 1972, P.L. 92-318, sec. 301(b)(2)(B), 86 Stat. 332; amended October 12, 1976, P.L. 94-482, sec. 409(b), 90 Stat. 2233; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677

CATALOG OF FEDERAL EDUCATION ASSISTANCE PROGRAMS

SEC. 423. The Commissioner shall prepare and make available in such form as he deems appropriate a catalog of all Federal education assistance programs whether or not such programs are administered by him. The catalog shall—

(1) identify each such program, and include the name of the program, the authorizing statute, the specific Federal administering officials, and a brief description of such program;

(2) set forth the availability of benefits and eligibility restrictions in each such program;

(3) set forth the budget requests for each such program, past appropriations, obligations incurred, and pertinent financial information indicating (A) the size of each such program for selected fiscal years, and (B) any funds remaining available;

(4) set forth the prerequisites, including the cost to the recipient of receiving assistance under each such program, and any duties required of the recipient after receiving benefits;

(5) identify appropriate officials, in Washington, District of Columbia, as well as in each State and locality (if applicable), to whom application or reference for information for each such program may be made;

(6) set forth the application procedures;

(7) contain a detailed index designed to assist the potential beneficiary in identifying all education assistance programs related to a particular need or category of potential beneficiaries;

(8) contain such other program information and data as the Commissioner deems necessary or desirable in order to assist the potential program beneficiary to understand and take advantage of each Federal education assistance program; and

(9) be transmitted to Congress with the Commissioner's annual report.

(20 U.S.C. 1231b) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 167; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

COMPILATION OF ASSISTED INNOVATIVE PROJECTS

SEC. 424. The Assistant Secretary shall publish annually a compilation of all innovative projects assisted under programs administered in the Education Division, including title III and part C of title IV of the Elementary and Secondary Education Act of 1965, in any year funds are used to carry out such programs. Such compilation shall be indexed according to subject, descriptive terms, and locations.

(20 U.S.C. 1231b-1) Enacted August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 565, 566; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

REVIEW OF APPLICATIONS

SEC. 425. (a) In the case of any applicable program under which financial assistance is provided to (or through) a State educational agency to be expended in accordance with a State plan approved by the Commissioner, and in the case of the program provided for in title I of the Elementary and Secondary Education Act of 1965, any applicant or recipient aggrieved by the final action of the State educational agency, and alleging a violation of State or Federal law, rules, regulations, or guidelines governing the applicable program, in (1) disapproving or failing to approve its application or program in whole or part, (2) failing to provide funds in amounts in accord with the requirements of laws and regulations, (3) ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds, or (4) terminating further assistance for an approved program, may within thirty days request a hearing. Within thirty days after it receives such a request, the State educational agency shall hold a hearing on the record and shall review such final action. No later than ten days after the hearing the State educational agency shall issue its written ruling, including reasons therefor. If it determines such final action was contrary to Federal or State law, or the rules, regulations, and guidelines, governing such applicable program it shall rescind such final action.

(b) Any applicant or recipient aggrieved by the failure of a State educational agency to rescind its final action after a review under such subsection (a) may appeal such action to the Commissioner. An appeal under this subsection may be taken only if notice of such appeal is filed with the Commissioner within twenty days after the applicant or recipient has been notified by the State educational agency of the results of its review under subsection (a). If, on such appeal, the Commissioner determines the final action of the State educational agency was contrary to Federal law, or the rules, regulations, and guidelines governing the applicable program, he shall issue an order to the State educational agency prescribing appropriate action to be taken by such agency. On such appeal, findings of fact of the State educational agency, if supported by substantial evidence, shall be final. The Commissioner may also issue such interim orders to State educational agencies as he may deem necessary and appropriate pending appeal or review.

(c) Each State educational agency shall make available at reasonable times and places to each applicant or recipient under a program to which this section applies all records of such agency pertaining to any review or appeal such applicant or recipient is conducting under this section, including records of other applicants.

(d) If any State educational agency fails or refuses to comply with any provision of this section, or with any order of the Commissioner under subsection (b), the Commissioner shall forthwith terminate all assistance to the State educational agency under the applicable program affected.

(20 U.S.C. 1231b-2) Enacted August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 566; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

TECHNICAL ASSISTANCE

SEC. 426. (a) For the purpose of carrying out more effectively Federal education programs, the Commissioner is authorized, upon request, to provide advice, counsel, and technical assistance to State educational agencies, institutions of higher education, and, with the approval of the appropriate State educational agency, elementary and secondary schools—

(1) in determining benefits available to them under Federal law;

(2) in preparing applications for, and meeting requirements of applicable programs;

(3) in order to enhance the quality, increase the depth, or broaden the scope of activities under applicable programs; and

(4) in order to encourage simplification of applications, reports, evaluations, and other administrative procedures.

(b) The Commissioner shall permit local educational agencies to use organized and systematic approaches in determining cost allocation, collection, measurement, and reporting under any applicable program, if he determines (1) that the use of such approaches will not in any manner lessen the effectiveness and impact of such program in achieving purposes for which it is intended, (2) that the agency will use such procedures as will insure adequate evaluation of each of the programs involved, and (3) that such approaches are consistent with criteria prescribed by the Comptroller General of the United States for the purposes of audit. For the purpose of this subsection a cost is allocable to a particular cost objective to the extent of relative benefits received by such objective.

(c) In awarding contracts and grants for the development of curricula or instructional materials, the Commissioner and the Director of the National Institute of Education shall—

(1) encourage applicants to assure that such curricula or instructional materials will be developed in a manner conducive to dissemination through continuing consultations with publishers, personnel of State and local educational agencies, teachers, administrators, community representatives, and other individuals experienced in such dissemination;

(2) permit applicants to include provision for reasonable consultation fees or planning costs; and

(3) insure that grants to public agencies and nonprofit private organizations and contracts with public agencies and private organizations for publication and dissemination of curricula or instructional materials, or both, are awarded competitively to such agencies and organizations which provide assurances that the curricula and instructional materials will reach the target populations for which they were developed.

(d) The Commissioner's annual report shall contain a statement of the Commissioner's activities under this section.

(20 U.S.C. 1231c) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 167; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 565; amended Nov. 1, 1978, P.L. 95-561, sec. 1248, 92 Stat. 2354, 2355; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

EQUALIZATION ASSISTANCE

Sec. 426A. (a) The Commissioner is authorized from the sums appropriated pursuant to subsection (d) to make grants to States to assist in developing and implementing plans to revise their systems of financing elementary and secondary education in order to achieve a greater equalization of resources among school districts. Any State desiring to receive such a grant shall (1) submit an application approved by the State legislature for such funds, (2) provide that State funds will match the Federal funds on a dollar for dollar basis, and (3) show how these efforts build upon the knowledge gained through the plans developed pursuant to section 842 of the Education Amendments of 1974.

(b) The Commissioner is authorized, from sums appropriated pursuant to subsection (d), (1) to develop and disseminate models and materials useful to the States in planning and implementing revisions of their school financing systems, and (2) to establish temporary national and regional training centers to assist those involved in school finance in providing the level of expertise needed by the States in revising their financing systems.

(c) The Commissioner shall (1) designate a unit within the Office of Education to serve as a national dissemination center for information on the States' efforts to achieve a greater equalization of resources for elementary and secondary education, and (2) develop an analysis of what has been learned through the use of funds available under section 842 of the Education Amendments of 1974 and disseminate the results of this analysis.

(d) There are hereby authorized to be appropriated $4,000,000 for each of the fiscal years ending prior to September 30, 1983, for the purposes of this section.

(20 U.S.C. 1231c-1) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1202, 92 Stat. 2334; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

PARENTAL INVOLVEMENT AND DISSEMINATION

Sec. 427. In the case of any applicable program in which the Commissioner determines that parental participation at the State or local level would increase the effectiveness of the program in achieving its purposes, he shall promulgate regulations with respect to such program setting forth criteria designed to encourage such participation. If the program for which such determination provides for payments to local educational agencies, applications for such payments shall—

(1) set forth such policies and procedures as will ensure that programs and projects assisted under the application have been planned and developed, and will be operated, in consultation with, and with the involvement of parents of, the children to be served by such programs and projects;

(2) be submitted with assurance that such parents have had an opportunity to present their views with respect to the application; and

(3) set forth policies and procedures for adequate dissemination of program plans and evaluations to such parents and the public.

(20 U.S.C. 1231d) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 168; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated August 21, 1974, P.L. 93-380, sec. 503(a), 88 Stat. 565; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

USE OF FUNDS WITHHELD FOR FAILURE TO COMPLY WITH OTHER PROVISIONS OF FEDERAL LAW

Sec. 428. At any time that the Commissioner establishes an entitlement, or makes an allotment, or reallotment to any State, under any applicable program, he shall reduce such entitlement, allotment, or reallotment by such amount as he determines it would have been reduced, had the data on which the entitlement, allotment, or reallotment is based excluded all data relating to local educational agencies of the State which on the date of the Commissioner's action are ineligible to receive the Federal financial assistance involved because of a failure to comply with title VI of the Civil Rights Act of 1964. Any appropriated funds which will not be paid to a State as a result of the preceding sentence may be used by the Commissioner for grants to local educational agencies of that State in accordance with section 405 of the Civil Rights Act of 1964.

(20 U.S.C. 1231e) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 168; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 565; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

AUTHORIZATION TO FURNISH INFORMATION

SEC. 429. The Commissioner is authorized to transfer transcripts or copies of other records of the Office of Education to State and local officials, public and private organizations, and individuals.

(20 U.S.C. 1231f) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 168; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 93-380, sec. 501(b), 88 Stat. 558; redesignated August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 565; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

SUBPART 2—ADMINISTRATION: REQUIREMENTS AND LIMITATIONS

APPLICATIONS

SEC. 430. (a) Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this section, the Commissioner is authorized to provide for the submission of applications for assistance effective for three fiscal years under any applicable program with whatever amendments to such applications being required as the Commissioner determines essential.

(b) The Commissioner shall, insofar as is practicable, establish uniform dates during the year for the submission of applications under all applicable programs and for the approval of such applications.

(c) The Commissioner shall, insofar as is practicable, develop and require the use of—

(1) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local agencies pursuant to some objective formula, and such application shall be used as the single application for as many of these programs as is practicable;

(2) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local agencies on a competitive or discretionary basis, and such application shall be used as the single application for as many of such programs as is practicable; and

(3) a common application for grants to local educational agencies in applicable programs which are directly administered by the Commissioner, and such application shall be used as the single application for as many of these programs as is practicable.

(20 U.S.C. 1231g) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1213, 92 Stat. 2342; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

REGULATIONS: REQUIREMENTS AND ENFORCEMENT

SEC. 431. (a)(1) For the purpose of this section, the term "regulation" means any rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed by the Commissioner.

(2) Regulations issued by the Department of Health, Education, and Welfare or the Office of Education, or by any official of such agencies, in connection with, or affecting, the administration of any applicable program shall contain immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority upon which such provision is based.

(b)(1) No proposed regulation prescribed for the administration of any applicable program may take effect until thirty days after it is published in the Federal Register.

(2)(A) During the thirty-day period prior to the date upon which such regulation is to be effective, the Commissioner shall, in accordance with the provisions of section 553, of title 5, United States Code, offer any interested party an opportunity to make comment upon, and take exception to, such standard, rule, regulation, or general requirement and shall reconsider any such standard, rule, regulation, or general requirement upon which comment is made or to which exception is taken.

(B) If the Commissioner determines that the thirty-day requirement in paragraph (1) will cause undue delay in the implementation of a regulation, thereby causing extreme hardship for the intended beneficiaries of an applicable program, he shall notify the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate. If neither committee disagrees with the determination of the Commissioner within 10 days after such notice, the Commissioner may waive such requirement with respect to such regulation.

(c) All such regulations shall be uniformly applied and enforced throughout the fifty States.

(d)(1) Concurrently with the publication in the Federal Register of any final regulation (except expected family contribution schedules and any amendments thereto promulgated pursuant to sections 428(a)(2) (D) and (E) and 482(a) (1) and (2) of the Higher Education Act of 1965) of general applicability as required in subsection (b) of this section, such final regulation shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. Such final regulation shall become effective not less than forty-five days after such transmission unless the Congress shall, by concurrent resolution, find that the final regulation is inconsistent with the Act from which it derives its authority, and disapprove such final regulation in whole or in part. Failure of the Congress to adopt such a concurrent resolution with respect to any such final regulation prescribed under any such Act, shall not represent, with respect to such final regulation, an approval or finding of consistency with the Act from which it derives its authority for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.

(2) The forty-five day period specified in paragraph (1) shall be deemed to run without interruption except during periods when either House is in adjournment sine die, in adjournment subject to the call of the Chair, or in adjournment to a day certain for a period of more than four consecutive days. In any such period of adjournment, the forty-five days shall continue to run, but if such period of adjournment is thirty calendar days, or less, the forty-five day period shall not be deemed to have elapsed earlier than ten days after the end of such adjournment. In any period of adjournment which lasts more than thirty days, the forty-five day period shall be deemed to have elapsed after thirty calendar days has elapsed, unless, during those thirty calendar days, either the Committee on Education and Labor of the House of Representatives, or the Committee on Labor and Human Resources of the Senate, or both, shall have directed its chairman, in accordance with said committee's rules, and the rules of that House, to transmit to the appropriate department or agency head a formal statement of objection to the final regulation. Such letter shall suspend the effective date of the final regulation until not less than twenty days after the end of such adjournment, during which the Congress may enact the concurrent resolution provided for in this subsection. In no event shall the final regulation go into effect until the forty-five day period shall have elapsed, as provided for in this subsection, for both Houses of the Congress.[1]

(e) Whenever a concurrent resolution of disapproval is enacted by the Congress under the provisions of this section, the agency which issued such regulation may thereafter issue a modified regulation to govern the same or substantially identical circumstances, but shall, in publishing such modification in the Federal Register and submitting it to the Speaker of the House of Representatives and the President of the Senate, indicate how the modification differs from the final regulation earlier disapproved, and how the agency believes the modification disposes of the findings by the Congress in the concurrent resolution of disapproval.

(f) For the purposes of subsections (d) and (e) of this section, activities under sections 404, 405, and 406 of this title, and under title IX of the Education Amendments of 1972 shall be deemed to be applicable programs.

(g) Not later than sixty days after the enactment of any part of any Act affecting the administration of any applicable program, the Commissioner shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a schedule in accordance with which the Commissioner has planned to promulgate final regulations implementing such Act or part of such Act. Such schedule shall provide that all such final regulations shall be promulgated within one hundred and eighty days after the submission of such schedule. Except as is provided in the following sentence, all such final regulations shall be promulgated in accordance with such schedule. If the Commissioner finds that, due to circumstances unforeseen at the time of the submission of any such schedule, he cannot comply with a schedule submitted pursuant to this subsection, he shall notify such committees of such findings and submit a new schedule. If both such committees notify the Commissioner of their approval of such new schedule, such final regulations shall be promulgated in accordance with such new schedule.

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[1] Section 5(b) of P.L. 94-43 (The Emergency Technical Provisions Act) provides that "Subsections (b) and (d) of Section 431 of the General Education Provisions Act shall not operate to delay the effectiveness of regulations issued by the Commissioner of Education to implement the provisions of this Act."

(20 U.S.C. 1232) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 169; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 93-380, sec. 509(a), 88 Stat. 566, 568; amended November 29, 1975, P.L. 94-142, sec. 7, 89 Stat. 796, amended October 12, 1976, P.L. 94-482, sec. 405, 90 Stat. 2231, amended Oct. 3, 1980, P.L. 96-374, sec. 1302, 94 Stat. 1497; amended August 13, 1981, P.L. 97-35, sec. 533(a)(3), 95 Stat. 453; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

MAINTENANCE OF EFFORT DETERMINATION

SEC. 431A. [Repealed by P.L. 98-511, sec. 109, 98 Stat. .]

PROHIBITION AGAINST FEDERAL CONTROL OF EDUCATION

SEC. 432. No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

(20 U.S.C. 1232a) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 169; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended June 23, 1972, P.L. 92-318, sec. 717(b), 86 Stat. 369; amended October 12, 1976, P.L. 94-482, sec. 404(b), 90 Stat. 2230.

LABOR STANDARDS

SEC. 433. Except for emergency relief under section 7 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), all laborers and mechanics employed by contractors or subcontractors on all construction and minor remodeling projects assisted under any applicable program shall be paid wages at rates not less than those prevailing on similar construction and minor remodeling in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

(20 U.S.C. 1232b) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 169; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326

Subpart 3—Administration of Education Programs and Projects by States and Local Educational Agencies

STATE EDUCATIONAL AGENCY MONITORING AND ENFORCEMENT

SEC. 434. (a) In the case of any applicable program in which Federal funds are made available to local agencies in a State through or under the supervision of a State board or agency, the Commissioner may require the State to submit a plan for monitoring compliance by local agencies with Federal requirements under such program and for enforcement by the State of such requirements. The Commissioner may require such plan to provide—

(1) for periodic visits by State personnel of programs administered by local agencies to determine whether such programs are being conducted in accordance with such requirements;

(2) for periodic audits of expenditures under such programs by auditors of the State or other auditors not under the control, direction, or supervision of the local educational agency; and

(3) that the State investigate and resolve all complaints received by the State, or referred to the State by the Commissioner relating to the administration of such programs.

(b) In order to enforce the Federal requirements under any applicable program the State may—

(1) withhold approval, in whole or in part, of the application of a local agency for funds under the program until the State is satisfied that such requirements will be met; except that the State shall not finally disapprove such an application unless the State provides the local agency an opportunity for a hearing before an impartial hearing officer and such officer determines that there has been a substantial failure by the local agency to comply with any of such requirements;

(2) suspend payments to any local agency, in whole or in part, under the program if the State has reason to believe that the local agency has failed substantially to comply with any of such requirements, except that (A) the State shall not suspend such payments until fifteen days after the State provides the local agency an opportunity to show cause why such action should not be taken and (B) no such suspension shall continue in effect longer than sixty days unless the State within such period provides the notice for a hearing required under paragraph (3) of this subsection;

(3) withhold payments, in whole or in part, under any such program if the State finds, after reasonable notice and opportunity for a hearing before an impartial hearing officer, that the local agency has failed substantially to comply with any of such requirements.

Any withholding of payments under paragraph (3) of this subsection shall continue until the State is satisfied that there is no longer a failure to comply substantially with any of such requirements.

(20 U.S.C. 1232c) Enacted Apr. 13, 1970, P.L. 91-230, sec. 401(a), 84 Stat. 169; redesignated June 23, 1972, P.L. 92-318, secs. 301(a)(1), 501, 86 Stat. 326, 345; amended Aug. 21, 1974, P.L. 93-380, sec. 510, 88 Stat. 568, 571; amended Oct. 12, 1976, P.L. 94-482, sec. 501(f)(1), 90 Stat. 2237; redesignated and amended Nov. 1, 1978, P.L. 95-

561, sec. 1231(a)(3), 92 Stat. 2342, 2343; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677

SINGLE STATE APPLICATION

SEC. 435. (a) In the case of any State which applies, contracts, or submits a plan, for participation in any applicable program in which Federal funds are made available for assistance to local educational agencies through, or under the supervision of, the State educational agency of that State, such State shall submit (subject, in the case of programs under titles I and IV of the Elementary and Secondary Education Act of 1965, to the provisions of title V of such Act) to the Commissioner a general application containing the assurances set forth in subsection (b). Such application may be submitted jointly for all programs covered by the application, or it may be submitted separately for each such program or for groups of programs. Each application submitted under this section must be approved by each official, agency, board, or other entity within the State which, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

(b) An application submitted under subsection (a) shall set forth assurances, satisfactory to the Commissioner—

(1) that each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to such entities, and that the public agency or nonprofit private agency, institution, or organization will administer such funds and property;

(3) that the State will adopt and use proper methods of administering each applicable program, including—

(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law,

(B) providing technical assistance, where necessary, to such agencies, institutions, and organizations,

(C) encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations,

(D) the dissemination throughout the State of information on program requirements and successful practices, and

(E) the correction of deficiencies in program operations that are identified through monitoring or evaluation;

(4) that the State will evaluate the effectiveness of covered programs in meeting their statutory objectives, at such intervals (not less often than once every three years) and in accordance with such procedures as the Commissioner may prescribe by regulation, and that the State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal official;

(5) that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

(6) that the State will make reports to the Commissioner (including reports on the results of evaluations required under paragraph (4)) as may reasonably be necessary to enable the Commissioner to perform his duties under each program, and that the State will maintain such records, in accordance with the requirements of section 437 of this Act, and afford access to the records as the Commissioner may find necessary to carry out his duties;

(7) that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

(A) the State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute;

(B) the State will publish each proposed plan, in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the plan is submitted to the Commissioner or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plan to be accepted for at least thirty days;

(C) the State will hold public hearings on the proposed plans if required by the Commissioner by regulation; and

(D) the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations; and

(8) that none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

(c) Each general application submitted under this section shall remain in effect for the duration of any program it covers. The Commissioner shall not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant changes in the circumstances affecting an assurance in that application.

(20 U.S.C. 1232d) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1231(a)(3), 92 Stat. 2343-2345 (former sec. 435 redesignated as sec. 415). See also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Oct. 19, 1984, P.L. 98-511, sec. 706(a), 98 Stat. 2406.

SINGLE LOCAL EDUCATIONAL AGENCY APPLICATION

SEC. 436. (a) Each local educational agency which participates in an applicable program under which Federal funds are made available to such agency through a State agency or board shall submit to such agency or board a general application containing the assurances set forth in subsection (b). That application shall cover the participation by that local education agency in all such programs.

(b) The general application submitted by a local educational agency under subsection (a) shall set forth assurances—

(1) that the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided to the local educational agency under each program and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;

(3) that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

(4) that the local educational agency will make reports to the State agency or board and to the Commissioner as may reasonably be necessary to enable the State agency or board and the Commissioner to perform their duties and that the local educational agency will maintain such records, including the records required under section 437, and provide access to those records, as the State agency or board or the Commissioner deem necessary to perform their duties;

(5) that the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;

(6) that any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

(7) that in the case of any project involving construction—

(A) the project is not inconsistent with overall State plans for the construction of school facilities, and

(B) in developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under section 504 of the Rehabilitation Act of 1973 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals;

(8) that the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects; and

(9) that none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

(c) A general application submitted under this section shall remain in effect for the duration of the programs it covers. The State agencies or boards administering the programs covered by the application shall not require the submission or amendment of such application unless required by changes in Federal or State law or by other significant change in the circumstances affecting an assurance in such application.

(20 U.S.C. 1232e) Enacted Apr. 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 170, redesignated June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended Nov. 1, 1978, P.L. 95-561, sec. 1231(a)(3), 92 Stat. 2345, 2346; amended Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Oct. 19, 1984, P.L. 98-511, sec. 706(b), 98 Stat. 2407.

Subpart 4—Records; Privacy; Limitation on Withholding Federal Funds

RECORDS

SEC. 437. (a) Each recipient of Federal funds under any applicable program through any grant, subgrant, contract, subcontract, loan, or other arrangement (other than procurement contracts awarded by an administrative head of an educational agency) shall keep records which fully disclose the amount and disposition by the recipient of those funds, the total cost of the activity for which the funds are used, the share of that cost provided from other sources, and such other records as will facilitate an effective audit. The recipient shall maintain such records for five years after the completion of the activity for which the funds are used.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit examination, to any records of a recipient which may be related, or pertinent to, the grants, subgrants, contracts, subcontracts, loans, or other arrangements to which reference is made in subsection (a), or which may relate to the compliance of the recipient with any requirement of an applicable program.

(20 U.S.C. 1232f) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1231(c), 92 Stat. 2346 (former sec. 437 redesignated as sec. 406A).

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS[1]

SEC. 438. (a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the educational records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

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[1] This section may be cited as the "Family Educational Rights and Privacy Act of 1974".

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purposes for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's educational records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials, which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I), are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 408(c)), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection.[1]

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education

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[1] Apparent error. The word ", unless—" should probably appear in place of the period.

program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1) (A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(20 U.S.C. 1232g) Enacted August 21, 1974, P.L. 93-380, sec. 513(a), 88 Stat. 571, 574; amended December 31, 1974, P.L. 93-568, sec. 2, 88 Stat. 1858, 1860; amended Aug. 6, 1979, P.L. 96-46, sec. 4(c) 93 Stat. 342; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

PROTECTION OF PUPIL RIGHTS

SEC. 439. (a) All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

(b) No student shall be required, as part of any applicable program, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning:

(1) political affiliations;

(2) mental and psychological problems potentially embarrassing to the student or his family;

(3) sex behavior and attitudes;

(4) illegal, anti-social, self-incriminating and demeaning behavior;

(5) critical appraisals of other individuals with whom respondents have close family relationships;

(6) legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.

(20 U.S.C. 1232h) Enacted August 21, 1974, P.L. 93-380, sec. 514(a), 88 Stat. 574; amended Nov. 1, 1978, P.L. 95-561, sec. 1250, 92 Stat. 2355, 2356

LIMITATION ON WITHHOLDING OF FEDERAL FUNDS

SEC. 440. (a) Except as provided in section 438(b)(1)(D) of this Act, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a preschool program, or other educational institution to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of, funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this section, reasonable notice and opportunity for a hearing shall be afforded the applicant.

(b) The extension of Federal financial assistance to a local educational agency may not be limited, deferred, or terminated by the Secretary on the ground of noncompliance with title VI of the Civil Rights Act of 1964 or any other nondiscrimination provision of Federal law unless such agency is accorded the right of due process of law, which shall include—

(1) at least 30 days prior written notice of deferral to the agency, setting forth the particular program or programs which the Secretary finds to be operated in noncompliance with a specific provision of Federal law;

(2) the opportunity for a hearing on the record before a duly appointed administrative law judge within a 60-day period (unless such period is extended by mutual consent of the Secretary and such agency) from the commencement of any deferral;

(3) the conclusion of such hearing and the rendering of a decision on the merits by the administrative law judge within a period not to exceed 90 days from the commencement of such hearing, unless the judge finds by a decision that such hearing cannot be concluded or such decision cannot be rendered within such period, in which case such judge may extend such period for not to exceed 60 additional days;

(4) the limitation of any deferral of Federal financial assistance which may be imposed by the Secretary to a period not to exceed 15 days after the rendering of such decision unless there has been an express finding on such record that such agency has failed to comply with any such nondiscrimination provision of Federal law; and

(5) procedures, which shall be established by the Secretary, to ensure the availability of sufficient funds, without regard to any fiscal year limitations, to comply with the decision of such judge.

(c) It shall be unlawful for the Secretary to defer or limit any Federal financial assistance on the basis of any failure to comply with the imposition of quotas (or any other numerical requirements which have the effect of imposing quotas) on the student admission practices of an institution of higher education or community college receiving Federal financial assistance.

(20 U.S.C. 1232i) Enacted August 21, 1974, P.L. 93-380, sec. 515(a), 88 Stat. 574; amended October 12, 1976, P.L. 94-482, secs. 407, 408, 90 Stat. 2232, 2233.

PART D—ADVISORY COUNCILS

DEFINITIONS

SEC. 441. As used in this part, the term—

(1) "advisory council" means any committee, board, commission, council, or other similar group (A) established or organized pursuant to any applicable statute, or (B) established under the authority of section 442; but such term does not include State advisory councils or commissions established pursuant to any such statute;

(2) "statutory advisory council" means an advisory council established by, or pursuant to, statute to advise and make recommendations with respect to the administration or improvement of an applicable program or other related matter;

(3) "nonstatutory advisory council" means an advisory council which is (A) established under the authority of section 442, or (B) established to advise and make recommendations with respect to the approval of applications for grants or contracts as required by statute;

(4) "Presidential advisory council" means a statutory advisory council, the members of which are appointed by the President;

(5) "Secretarial advisory council" means a statutory advisory council, the members of which are appointed by the Secretary;

(6) "Commissioner's advisory council"[1] means a statutory advisory council, the members of which are appointed by the Commissioner;

(7) "applicable statute" means any statute (or title, part, or section thereof) which authorizes an applicable program or controls the administration of any such program.

(20 U.S.C. 1233) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 170; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

AUTHORIZATION FOR NECESSARY ADVISORY COUNCILS

SEC. 442. (a) The Commissioner is authorized to create, and appoint the members of, such advisory councils as he determines in writing to be necessary to advise him with respect to—

(1) the organization of the Office of Education and its conduct in the administration of applicable programs;

(2) recommendations for legislation regarding education programs and the means by which the educational needs of the Nation may be met; and

(3) special problems and areas of special interest in education.

(b) Each advisory council created under the authority of subsection (a) shall terminate not later than one year from the date of its creation unless the Commissioner determines in writing not more than thirty days prior to the expiration of such one year that its existence for an additional period, not to exceed one year, is necessary in order to complete the recommendations or reports for which it was created.

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[1] References to the office, functions, etc. of the Commissioner of Education were, in effect, deleted by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677, 690.

(c) The Commissioner shall include in his report submitted pursuant to section 448 a statement on all advisory councils created or extended under the authority of this section and their activities.

(20 U.S.C. 1233a) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 171; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

MEMBERSHIP AND REPORTS OF STATUTORY ADVISORY COUNCILS

SEC. 443. (a) Notwithstanding any other provision of law unless expressly in limitation of the provisions of this section, each statutory advisory council—

(1) shall be composed of the number of members provided by statute who may be appointed, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, and shall serve for terms of not to exceed three years, which in the case of initial members, shall be staggered; and

(2) shall make an annual report of its activities, findings and recommendations to the Congress not later than March 31 of each calendar year, which shall be submitted with the Commissioner's annual report.

The Commissioner shall not serve as a member of any such advisory council.

(b) Members of Presidential advisory councils shall continue to serve, regardless of any other provision of law limiting their terms, until the President appoints other members to fill their positions.

(20 U.S.C. 1233b) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 171; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 93-380, sec. 516(a), 88 Stat. 575; amended October 12, 1976, P.L. 94-482, sec. 411, 90 Stat. 2234; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

COMPENSATION OF MEMBERS OF ADVISORY COUNCILS

SEC. 444. Members of all advisory councils to which this part is applicable who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the advisory council or otherwise engaged in the business of the advisory council, be entitled to receive compensation at a rate fixed by the Commissioner, but not exceeding the rate specified at the time of such service for grade GS-18 in section 5332 of title 5, United States Code, including traveltime, and while so serving on the business of the advisory council away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(20 U.S.C. 1233c) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 171; renumbered June 23, 1972, P.L. 92-18, sec. 301(a)(1), 86 Stat. 326; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

PROFESSIONAL, TECHNICAL, AND CLERICAL STAFF; TECHNICAL ASSISTANCE

SEC. 445. (a) Presidential advisory councils are authorized to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, or otherwise obtain the services of, such professional, technical, and clerical personnel as may be necessary to enable them to carry out their functions, as prescribed by law.

(b) The Assistant Secretary shall engage such personnel and technical assistance as may be required to permit Secretarial and Assistant Secretary's advisory councils to carry out their function as prescribed by law.

(c) Subject to regulations of the Assistant Secretary, Presidential advisory councils are authorized to procure temporary and intermittent services of such personnel as are necessary to the extent authorized by section 3109 of title 5, United States Code, but at rates not to exceed the rate specified at the time of such service for grade GS-18 in section 5332 of such title.

(d) No employee of an advisory council, appointed and compensated pursuant to this section, shall be compensated at a rate in excess of that which such employee would receive if such employee were appointed subject to the appropriate provisions of title 5, United States Code, regarding appointments to, and compensation with respect to, the competitive service, except that—

(1) executive directors of Presidential advisory councils shall be compensated at the rate specified for employees placed in grade GS-18 of the General Schedule set forth in section 5332 of such title 5;

(2) executive directors of all other statutory advisory councils shall be compensated at the rate provided for employees in grade 15 of such General Schedule; and

(3) in accordance with regulations promulgated by the Assistant Secretary, other employees of advisory councils shall be compensated at such rates as may be necessary to enable such advisory councils to accomplish their purposes.

(20 U.S.C. 1233d) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 171; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 93-380, sec. 517(p), 88 Stat. 575; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

MEETINGS OF ADVISORY COUNCILS

SEC. 446. (a) Each statutory advisory council shall meet at the call of the chairman thereof but not less than two times each year. Nonstatutory advisory councils shall meet in accordance with regulations promulgated bv the Commissioner.

(b) Minutes of each meeting of each advisory council shall be kept and shall contain a record of the persons present, a description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory council. The accuracy of all minutes shall be certified to by the chairman of the advisory council.

(20 U.S.C. 1233e) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 172, renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

AUDITING AND REVIEW OF ADVISORY COUNCIL ACTIVITIES

SEC. 447. (a) Each statutory advisory council shall be subject to such general regulations as the Commissioner may promulgate respecting the governance of statutory advisory councils and shall keep such records of its activities as will fully disclose the disposition of any funds which may be at its disposal and the nature and extent of its activities in carrying out its functions.

(b) The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of each advisory council which is subject to the operation of this part.

(20 U.S.C. 1233f) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 172; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 92-380, sec. 517(b), 88 Stat. 575; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

REPORT BY THE COMMISSIONER OF EDUCATION

SEC. 448. (a) Not later than June 30 of each calendar year after 1970, the Commissioner shall submit, as a part of the Commissioner's annual report, a report on the activities of the advisory councils which are subject to this part to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives. Such report shall contain, at least, a list of all such advisory councils, the names and affiliations of their members, a description of the function of each advisory council, and a statement of the dates of the meetings of each such advisory council.

(b) If the Commissioner determines that a statutory advisory council is not needed or that the functions of two or more statutory advisory councils should be combined, he shall include in the report a recommendation that such advisory council be abolished or that such functions be combined. Unless there is an objection to such action by either the Senate or the House of Representatives within ninety days after the submission of such report, the Commissioner is authorized to abolish such advisory council or combine the functions of two or more advisory councils as recommended in such report.

(20 U.S.C. 1233g) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 172; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326, amended June 15, 1977, P.L. 95-43, sec. 1(d), 91 Stat. 219; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

RELATION TO OTHER LAWS

SEC. 449. (a) No provision of any law establishing, authorizing the establishment of, or controlling the operation of, an advisory council which is not consistent with the provisions of this part shall apply to any advisory council to which this part applies.

(b) The provisions of subsections (e) and (f) of section 10 of the Federal Advisory Committee Act shall not apply to Presidential advisory councils (as defined in section 441).

(20 U.S.C. 1233h) Enacted August 21, 1974, P.L. 93-380, sec. 518(a), 88 Stat. 575.

PART D—GENERAL EDUCATION PROVISIONS ACT

SEC. 3501. ENFORCEMENT UNDER THE GENERAL EDUCATION PROVISIONS ACT.

(a) AMENDMENT TO PART E OF GEPA.—Part E of the General Education Provisions Act is amended to read as follows:

"PART E—ENFORCEMENT

"SEC. 451. OFFICE OF ADMINISTRATIVE LAW JUDGES.

Establishment. 20 USC 1234.

"(a) The Secretary shall establish in the Department of Education an Office of Administrative Law Judges (hereinafter in this part referred to as the 'Office') which shall conduct—

"(1) recovery of funds hearings pursuant to section 452 of this Act,

"(2) withholding hearings pursuant to section 455 of this Act,

"(3) cease and desist hearings pursuant to section 456 of this Act, and

"(4) other proceedings designated by the Secretary.

"(b) The administrative law judges (hereinafter 'judges') of the Office shall be appointed by the Secretary in accordance with section 3105 of title 5, United States Code.

"(c) The judges shall be officers or employees of the Department. The judges shall meet the requirements imposed for administrative law judges pursuant to section 3105 of title 5, United States Code. In choosing among equally qualified candidates for such positions the Secretary shall give favorable consideration to the candidates' experience in State or local educational agencies and their knowledge of the workings of Federal education programs in such agencies. The Secretary shall designate one of the judges of the Office to be the chief judge.

"(d) For the purposes of conducting hearings described in subsection (a), the chief judge shall assign a judge to each case or class of cases. A judge shall be disqualified in any case in which the judge has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party's attorney as to make it improper for the judge to be assigned to the case.

"(e) The judge shall review and may require that evidence be taken on the sufficiency of the preliminary departmental determination as set forth in section 452.

Regulations.

"(f)(1) The proceedings of the Office shall be conducted according to such rules as the Secretary shall prescribe by regulation in conformance with the rules relating to hearings in title 5, United States Code, sections 554, 556, and 557.

"(2) The provisions of title 5, United States Code, section 504, relating to costs and fees of parties, shall apply to the proceedings before the Department.

"(g)(1) In order to secure a fair, expeditious, and economical resolution of cases and where the judge determines that the discovered information is likely to elicit relevant information with respect to an issue in the case, is not sought primarily for the purposes of delay or harassment, and would serve the ends of justice, the judge may order a party to—

"(A) produce relevant documents;

"(B) answer written interrogatories that inquire into relevant matters; and

"(C) have depositions taken.

The judge shall set a time limit of 90 days on the discovery period. The judge may extend this period for good cause shown. At the request of any party, the judge may establish a specific schedule for the conduct of discovery.

"(2) In order to carry out the provisions of subsections (f)(1) and (g)(1), the judge is authorized to issue subpoenas and apply to the appropriate court of the United States for enforcement of a subpoena. The court may enforce the subpoena as if it pertained to a proceeding before that court.

"(h) The Secretary shall establish a process for the voluntary mediation of disputes pending before the Office. The mediator shall be agreed to by all parties involved in mediation and shall be independent of the parties to the dispute. In the mediation of disputes the Secretary shall consider mitigating circumstances and proportion of harm pursuant to section 453. In accordance with rule 408 of the Federal Rules of Evidence, evidence of conduct or statements made in compromise negotiations shall not be admissible in proceedings before the Office. Mediation shall be limited to 120 days, except that the mediator may grant extensions of such period.

"(i) The Secretary shall employ, assign, or transfer sufficient professional personnel, including judges of the Office, to ensure that all matters brought before the Office may be dealt with in a timely manner.

20 USC 1234a.

"SEC. 452. RECOVERY OF FUNDS.

Grants.
Contracts.

"(a)(1) Whenever the Secretary determines that a recipient of a grant or cooperative agreement under an applicable program must return funds because the recipient has made an expenditure of funds that is not allowable under that grant or cooperative agreement, or has otherwise failed to discharge its obligation to account properly for funds under the grant or cooperative agreement, the Secretary shall give the recipient written notice of a preliminary departmental decision and notify the recipient of its right to have that decision reviewed by the Office and of its right to request mediation.

Reports

"(2) In a preliminary departmental decision, the Secretary shall have the burden of stating a prima facie case for the recovery of funds. The facts to serve as the basis of the preliminary departmental decision may come from an audit report, an investigative report, a monitoring report, or other evidence. The amount of funds to be recovered shall be determined on the basis of section 453.

Records

"(3) For the purpose of paragraph (2), failure by a recipient to maintain records required by law, or to allow the Secretary access to such records, shall constitute a prima facie case.

"(b)(1) A recipient that has received written notice of a preliminary departmental decision and that desires to have such decision reviewed by the Office shall submit to the Office an application for review not later than 30 days after receipt of notice of the preliminary departmental decision. The application shall be in the form and contain the information specified by the Office. As expeditiously as possible, the Office shall return to the Secretary for such action as the Secretary considers appropriate any preliminary departmental decision which the Office determines does not meet the requirements of subsection (a)(2).

"(2) In cases where the preliminary departmental decision requests a recovery of funds from a State recipient, that State recipient may not recover funds from an affected local educational agency unless that State recipient has—

"(A) transmitted a copy of the preliminary departmental decision to any affected subrecipient within 10 days of the date that the State recipient in a State administered program received such written notice; and

"(B) consulted with each affected subrecipient to determine whether the State recipient should submit an application for review under paragraph (1).

"(3) In any proceeding before the Office under this section, the burden shall be upon the recipient to demonstrate that it should not be required to return the amount of funds for which recovery is sought in the preliminary departmental decision under subsection (a).

"(c) A hearing shall be set 90 days after receipt of a request for review of a preliminary departmental decision by the Office, except that such 90-day requirement may be waived at the discretion of the judge for good cause.

"(d) Upon review of a decision of the Office by the Secretary, the findings of fact by the Office, if supported by substantial evidence, shall be conclusive. However, the Secretary, for good cause shown, may remand the case to the Office to take further evidence, and the Office may thereupon make new or modified findings of fact and may modify its previous action. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(e) Parties to the proceeding shall have 30 days to file a petition for review of a decision of the administrative law judges with the Office of the Secretary.

"(f)(1) If a recipient submits a timely application for review of a preliminary departmental decision, the Secretary shall take no collection action until the decision of the Office upholding the preliminary Department decision in whole or in part becomes final agency action under subsection (g).

"(2) If a recipient files a timely petition for judicial review under section 458, the Secretary shall take no collection action until judicial review is completed.

"(3) The filing of an application for review under paragraph (1) or a petition for judicial review under paragraph (2) shall not affect the authority of the Secretary to take any other adverse action under this part against the recipient.

"(g) A decision of the Office regarding the review of a preliminary departmental decision shall become final agency action 60 days after the recipient receives written notice of the decision unless the Secretary either—

"(1) modifies or sets aside the decision, in whole or in part, in which case the decision of the Secretary shall become final agency action when the recipient receives written notice of the Secretary's action, or

"(2) remands the decision to the Office.

Federal Register, publication.

"(h) The Secretary shall publish decisions that have become final agency action under subsection (g) in the Federal Register or in another appropriate publication within 60 days.

"(i) The amount of a preliminary departmental decision under subsection (a) for which review has not been requested in accordance with subsection (b), and the amount sustained by a decision of the Office or the Secretary which becomes final agency action under subsection (g), may be collected by the Secretary in accordance with chapter 37 of title 31, United States Code.

"(j)(1) Notwithstanding any other provision of law, the Secretary may, subject to the notice requirements of paragraph (2), compromise any preliminary departmental decision under this section which does not exceed the amount agreed to be returned by more than $200,000, if the Secretary determines that (A) the collection of any or all or the amount thereof would not be practical or in the public interest, and (B) the practice which resulted in the preliminary departmental decision has been corrected and will not recur.

Federal Register, publication.

"(2) Not less than 45 days prior to the exercise of the authority to compromise a preliminary departmental decision pursuant to paragraph (1), the Secretary shall publish in the Federal Register a notice of intention to do so. The notice shall provide interested persons an opportunity to comment on any proposed action under this subsection through the submission of written data, views, or arguments.

"(k) No recipient under an applicable program shall be liable to return funds which were expended in a manner not authorized by law more than 5 years before the recipient received written notice of a preliminary departmental decision.

Claims.

"(l) No interest shall be charged arising from a claim during the administrative review of the preliminary departmental decision

"SEC. 453. MEASURE OF RECOVERY.

20 USC 1234b.

"(a)(1) A recipient determined to have made an unallowable expenditure, or to have otherwise failed to discharge its responsibility to account properly for funds, shall be required to return funds in an amount that is proportionate to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which the recipient received the award. Such amount shall be reduced in whole or in part by an amount that is proportionate to the extent the mitigating circumstances caused the violation.

"(2) For the purpose of paragraph (1), an identifiable Federal interest includes, but is not limited to, serving only eligible beneficiaries; providing only authorized services or benefits; complying with expenditure requirements and conditions (such as set-aside, excess cost, maintenance of effort, comparability, supplement-not-supplant, and matching requirements); preserving the integrity of planning, application, recordkeeping, and reporting requirements; and maintaining accountability for the use of funds.

"(b)(1) When a State or local educational agency is determined to have made an unallowable expenditure, or to have otherwise failed to discharge its responsibility to account properly for funds, and mitigating circumstances exist, as described in paragraph (2), the judge shall reduce such amount by an amount that is proportionate to the extent the mitigating circumstances caused the violation. Furthermore, the judge is authorized to determine that no recovery is justified when mitigating circumstances warrant. The burden of demonstrating the existence of mitigating circumstances shall be upon the State or local educational agency.

"(2) For the purpose of paragraph (1), mitigating circumstances exist only when it would be unjust to compel the recovery of funds because the State or local educational agency—

"(A) actually and reasonably relied upon erroneous written guidance provided by the Department;

"(B) made an expenditure or engaged in a practice after—

"(i) the State or local educational agency submitted to the Secretary, in good faith, a written request for guidance with respect to the expenditure or practice at issue, and

"(ii) a Department official did not respond within 90 days of receipt by the Department of such request; or

"(C) actually and reasonably relied upon a judicial decree issued to the recipient.

"(3) A written request for guidance as described in paragraph (2) sent by certified mail (return receipt requested) shall be conclusive proof of receipt by the Department.

Mail.

"(4) If the Secretary responds to a written request for guidance described in paragraph (2)(B) more than 90 days after its receipt, the State or local educational agency that submitted the request shall comply with the guidance received at the earliest practicable time.

"(5) In order to demonstrate the existence of the mitigating circumstances described in paragraph (2)(B), the State or local educational agency shall demonstrate that—

"(A) the written request for guidance accurately described the proposed expenditure or practice and included the facts necessary for a determination of its legality; and

"(B) the written request for guidance contained a certification by the chief legal officer of the State educational agency that such officer had examined the proposed expenditure or practice and believed the proposed expenditure or practice was permissible under then applicable State and Federal law; and

"(C) the State or local educational agency reasonably believed that the proposed expenditure or practice was permissible under then applicable State and Federal law.

"(6) The Secretary shall disseminate to State educational agencies responses to written requests for guidance, described in paragraph (5), that reflect significant interpretations of applicable law or policy.

"(c) The Secretary shall periodically review the written requests for guidance submitted under this section to determine the need for new or supplementary regulatory or other guidance under applicable programs.

20 USC 1234c

"SEC. 454. REMEDIES FOR EXISTING VIOLATIONS.

"(a) Whenever the Secretary has reason to believe that any recipient of funds under any applicable program is failing to comply substantially with any requirement of law applicable to such funds, the Secretary may—

"(1) withhold further payments under that program, as authorized by section 455;

"(2) issue a complaint to compel compliance through a cease and desist order of the Office, as authorized by section 456;

"(3) enter into a compliance agreement with a recipient to bring it into compliance, as authorized by section 457; or

"(4) take any other action authorized by law with respect to the recipient.

"(b) Any action, or failure to take action, by the Secretary under this section shall not preclude the Secretary from seeking a recovery of funds under section 452.

20 USC 1234d

"SEC. 455. WITHHOLDING.

"(a) In accordance with section 454, the Secretary may withhold from a recipient, in whole or in part, further payments (including payments for administrative costs) under an applicable program.

"(b) Before withholding payments, the Secretary shall notify the recipient, in writing, of—

"(1) the intent to withhold payments;

"(2) the factual and legal basis for the Secretary's belief that the recipient has failed to comply substantially with a requirement of law; and

"(3) an opportunity for a hearing to be held on a date at least 30 days after the notification has been sent to the recipient.

"(c) The hearing shall be held before the Office and shall be conducted in accordance with the rules prescribed pursuant to subsections (f) and (g) of section 451 of this Act.

"(d) Pending the outcome of any hearing under this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

"(e) Upon review of a decision of the Office by the Secretary, the findings of fact by the Office, if supported by substantial evidence, shall be conclusive. However, the Secretary, for good cause shown, may remand the case to the Office to take further evidence, and the ffice may thereupon make new or modified findings of fact and ay modify its previous action. Such new or modified findings of act shall likewise be conclusive if supported by substantial vidence.

"(f) The decision of the Office in any hearing under this section hall become final agency action 60 days after the recipient receives written notice of the decision unless the Secretary either—

"(1) modifies or sets aside the decision, in whole or in part, in which case the decision of the Secretary shall become final agency action when the recipient receives written notice of the Secretary's action; or

"(2) remands the decision of the Office.

"SEC. 456. CEASE AND DESIST ORDERS.

20 USC 1234e.

"(a) In accordance with section 454, the Secretary may issue to a recipient under an applicable program a complaint which—

"(1) describes the factual and legal basis for the Secretary's belief that the recipient is failing to comply substantially with a requirement of law; and

"(2) contains a notice of a hearing to be held before the Office on a date at least 30 days after the service of the complaint.

"(b) The recipient upon which a complaint has been served shall have the right to appear before the Office on the date specified and to show cause why an order should not be entered by the Office requiring the recipient to cease and desist from the violation of law charged in the complaint.

"(c) The testimony in any hearing held under this section shall be reduced to writing and filed with the Office. If upon that hearing the Office is of the opinion that the recipient is in violation of any requirement of law as charged in the complaint, the Office shall—

"(1) make a report in writing stating its findings of fact; and Reports.

"(2) issue to the recipient an order requiring the recipient to cease and desist from the practice, policy, or procedure which resulted in the violation.

"(d) The report and order of the Office under this section shall become the final agency action when the recipient receives the report and order.

"(e) The Secretary may enforce a final order of the Office under this section which becomes final agency action by—

"(1) withholding from the recipient any portion of the amount payable to it, including the amount payable for administrative costs, under the applicable program; or

"(2) certifying the facts to the Attorney General who shall cause an appropriate proceeding to be brought for the enforcement of the order.

"SEC. 457. COMPLIANCE AGREEMENTS.

20 USC 1234f.

"(a) In accordance with section 454, the Secretary may enter into a compliance agreement with a recipient under an applicable program. The purpose of any compliance agreement under this section shall be to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements.

"(b)(1) Before entering into a compliance agreement with a recipient, the Secretary shall hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. The recipient shall have the burden of persuading the Secretary that full compliance with the applicable requirements of law is not feasible until a future date.

Federal Register, publication.

"(2) If the Secretary determines, on the basis of all the evidence presented, that full compliance is genuinely not feasible until a future date, the Secretary shall make written findings to that effect and shall publish those findings, along with the substance of any compliance agreement, in the Federal Register.

"(c) A compliance agreement under this section shall contain—

"(1) an expiration date not later than 3 years from the date of the written findings under subsection (b)(2), by which the recipient shall be in full compliance with the applicable requirements of law, and

"(2) those terms and conditions with which the recipient must comply until it is in full compliance.

"(d) If a recipient fails to comply with the terms and conditions of a compliance agreement under this section, the Secretary may consider that compliance agreement to be no longer in effect, and the Secretary may take any action authorized by law with respect to the recipient.

Courts, U.S.
20 USC 1234g.

"SEC. 458. JUDICIAL REVIEW.

"(a) Any recipient of funds under an applicable program that would be adversely affected by a final agency action under section 452, 455, or 456 of this Act, and any State entitled to receive funds under a program described in section 435(a) of this title whose application has been disapproved by the Secretary, shall be entitled to judicial review of such action in accordance with the provisions of this section. The Secretary may not take any action on the basis of a final agency action until judicial review is completed.

"(b) A recipient that desires judicial review of an action described in subsection (a) shall, within 60 days of that action, file with the United States Court of Appeals for the circuit in which that recipient is located, a petition for review of such action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary shall file in the court the record of the proceedings on which the action was based, as provided in section 2112 of title 28, United States Code.

Records.

"(c) The findings of fact by the Office, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Office to take further evidence, and the Office may make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

"(d) The court shall have jurisdiction to affirm the action of the Office or the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

20 USC 1234h.

"SEC. 459. USE OF RECOVERED FUNDS.

"(a) Whenever the Secretary recovers funds paid to a recipient under a grant or cooperative agreement made under an applicable program because the recipient made an expenditure of funds that was not allowable, or otherwise failed to discharge its responsibility to account properly for funds, the Secretary may consider those funds to be additional funds available for that program and may rrange to repay to the recipient affected by that action an amount ot to exceed 75 percent of the recovered funds if the Secretary etermines that—

"(1) the practices or procedures of the recipient that resulted in the violation of law have been corrected, and that the recipient is in all other respects in compliance with the requirements of that program;

"(2) the recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

"(3) the use of those funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

"(b) Any payments by the Secretary under this section shall be subject to such other terms and conditions as the Secretary considers necessary to accomplish the purposes of the affected programs, including—

"(1) the submission of periodic reports on the use of funds provided under this section; and

"(2) consultation by the recipient with students, parents, or representatives of the population that will benefit from the payments.

"(c) Notwithstanding any other provisions of law, the funds made available under this section shall remain available for expenditure for a period of time deemed reasonable by the Secretary, but in no case to exceed more than 3 fiscal years following the fiscal year in which final agency action under section 452(e) is taken.

Federal Register, publication.

"(d) At least 30 days prior to entering into an arrangement under this section, the Secretary shall publish in the Federal Register a notice of intent to enter into such an arrangement and the terms and conditions under which payments will be made. Interested persons shall have an opportunity for at least 30 days to submit comments to the Secretary regarding the proposed arrangement.

20 USC 1234i.

"SEC. 460. DEFINITIONS.

"For purposes of this part:

"(1) The term 'recipient' means a recipient of a grant or cooperative agreement under an applicable program.

"(2) The term 'applicable program' excludes programs authorized by the Higher Education Act of 1965 and assistance programs provided under the Act of September 30, 1950 (Public Law 874, 81st Congress), and the Act of September 23, 1950 (Public Law 815, 81st Congress)."

20 USC 1234 note

(b) EFFECTIVE DATES.—

(1) Except as provided in paragraph (2), the amendments made by this section shall be effective 180 days after the date of enactment of this Act.

(2) The amendments made by this part shall not apply to any case in which the recipient, prior to the effective date of this part, received a written notice that such recipient must return funds to the Department.

20 USC 1232d.

(c) CONFORMING AMENDMENTS.—Section 435(a) of the General Education Provisions Act is amended by striking "titles I and IV" and all that follows through "such Act)" and inserting "chapter 1 and chapter 2 of title I of the Elementary and Secondary Education Act of 1965".

APPENDIX D

PART 76—STATE-ADMINISTERED PROGRAMS

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Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), and 3474, unless otherwise noted.

Source: 45 FR 22517, Apr. 3, 1980, unless otherwise noted. Redesignated at 45 FR 77368, Nov. 21, 1980.

Subpart A—General

REGULATIONS THAT APPLY TO STATE-ADMINISTERED PROGRAMS

§ 76.1 Programs to which Part 76 applies.

(a) The regulations in Part 76 apply to each State-administered program of the Department.

(b) If a State formula grant program does not have implementing regulations, the Secretary implements the program under the authorizing statute and, to the extent consistent with the authorizing statute, under the General Education Provisions Act and the regulations in this part. For the purposes of this part, the term "State formula grant program" means a program whose authorizing statute or implementing regulations provide a formula for allocating program funds among eligible States.

(c) The regulations in Part 76 do not apply to the programs authorized under Chapter 1 and Chapter 2 of the Education Consolidation and Improvement Act of 1981.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), and 3474)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 84059, Dec. 22, 1980; 47 FR 52354, Nov. 19, 1982; 50 FR 29330, July 18, 1985; 50 FR 32564, Aug. 13, 1985; 50 FR 43545, Oct. 25, 1985; 51 FR 35583, Oct. 6, 1986; 52 FR 27804, July 24, 1987; 54 FR 21776, May 19, 1989]

§ 76.2 Exceptions in program regulations to Part 76.

If a program has regulations that are not consistent with Part 76, the implementing regulations for that program identify the sections of Part 76 that do not apply.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

§ 76.3 ED general grant regulations apply to these programs.

The ED general grant regulations in 34 CFR Part 74 apply to the programs covered by this part. To find subjects covered under 34 CFR Part 74, look in the table of contents at the beginning of 34 CFR Part 74.

(Authority: 20 U.S.C. 1221e-3(a)(1))

ELIGIBILITY FOR A GRANT OR SUBGRANT

§ 76.50 Statutes determine eligibility and whether subgrants are made.

(a) Under a program covered by this part, the Secretary makes a grant:

(1) To the State agency designated by the authorizing statute for the program; or

(2) To the State agency designated by the State in accordance with the authorizing statute.

(b) The authorizing statute determines the extent to which a State may:

(1) Use grant funds directly; and

(2) Make subgrants to eligible applicants.

(c) The regulations in Part 76 on subgrants apply to a program only if subgrants are authorized under that program.

(d) The authorizing statute determines the eligibility of an applicant for a subgrant.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 52 FR 27804, July 24, 1987; 54 FR 21776, May 19, 1989]

CROSS-REFERENCE: See 34 CFR Part 74, Subpart E—Waiver of Single State Agency Requirements.

§ 76.51 A State distributes funds by formula or competition.

If a program statute authorizes a State to make subgrants, the statute:

(a) Requires the State to use a formula to distribute funds;

(b) Gives the State discretion to select subgrantees through a competition among the applicants or through some other procedure; or

(c) Allows some combination of these procedures.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 54 FR 21776, May 19, 1989]

Subpart B—How a State Applies for a Grant

STATE PLANS AND APPLICATIONS

§ 76.100 Effect of this subpart.

This subpart establishes general requirements that a State must meet to apply for a grant under a program covered by this part. Additional requirements are in the authorizing statute and the implementing regulations for the program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[52 FR 27804, July 24, 1987]

§ 76.101 The general State application.

A State that makes subgrants to local educational agencies under a program subject to this part shall have on file with the Secretary a general application that meets the requirements of Section 435 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232d)

[52 FR 27804, July 24, 1987]

§ 76.102 Definition of "State plan" for Part 76.

As used in this part, "State plan" means any of the following documents:

(a) *Compensatory education.* The application under Section 162 of Title I of the Elementary and Secondary Education Act.

(b) *Migrant children.* The application under Sections 141-143 of the Elementary and Secondary Education Act.

(c) *Basic skills.* The agreement under Title II-B of the Elementary and Secondary Education Act.

(d) *Library resources.* The State plan under Title II of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(e) *Innovative projects; Guidance and Counseling.* The State plan under Title III of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(f) *Educational Improvement, Resources, and Support.* The State plan under Title IV of the Elementary and Secondary Education Act.

(g) *State educational agencies.* The State plan under Title V-B of the Elementary and Secondary Education Act.

(h) *State educational agencies.* The application under Title V-A of the Elementary and Secondary Education Act (as in effect September 30, 1978).

(i) *Community schools.* The State plan under Title VIII of the Elementary and Secondary Education Act.

(j) *Gifted and talented children.* The application under Section 904(b)(1) of Title IX of the Elementary and Secondary Education Act.

(k) *Academic subjects.* The State plan under Title III-A of the National Defense Education Act.

(l) *Handicapped children.* The State plan under Part B of the Education of the Handicapped Act.

(m) *Handicapped children.* The application under Section 619 of the Education of the Handicapped Act.

(n) *Vocational education.* The annual program plan and the annual accountability report under Part A of Title I of the Vocational Education Act.

(o) *Career education.* The State plan under Section 7 of the Career Education Incentive Act.

(p) *Adult education.* The State plan under the Adult Education Act.

(q) *Community services.* The State plan under Title I of the Higher Education Act.

(r) *State student incentive grants.* The application under Section 415C of the Higher Education Act.

(s) *Educational information centers.* The State plan under Section 418B of the Higher Education Act.

(t) *Incentive grants for State student financial asistance training.* The application under Section 493C of the Higher Education Act.

(u) *Postsecondary commissions.* The application for intrastate planning under Section 1203(a) of the Higher Education Act.

(v) *Libraries.* The basic State plan a long-range program, and an annual program under the Library Services and Construction Act.

(w) *State equalization.* The application under Section 842 of the Education Amendments of 1974.

(x) *Client Assistance Program.* The written request for assistance under section 112 of the Rehabilitation Act of 1973, as amended.

(y) *Removal of Architectural Barriers to the Handicapped.* The application under Section 607 of the Education of the Handicapped Act.

(z) *Emergency Immigrant Education.* The application under the Emergency Immigrant Education Program.

(aa) *Math-science programs.* The State application under Section 209 of Title II of the Education for Economic Security Act.

(bb) *Programs that do not have regulations.* If a State-administered program does not have implementing regulations, the documents that the authorizing statute for the program requires a State to submit to receive a grant.

(cc) *Carl D. Perkins Scholarship Program.* The application under Section 563 of the Higher Education Act.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 84060, Dec. 22, 1980; 50 FR 9962, Mar. 12, 1985; 50 FR 29330, July 18, 1985; 50 FR 32564, Aug. 13, 1985; 50 FR 33188, Aug. 16, 1985; 50 FR 43545, Oct. 25, 1985; 51 FR 35563, Oct. 6, 1986; 52 FR 27804, July 24, 1987]

§ 76.103 Three-year State plans.

(a) Beginning no later than fiscal year 1981, each State plan will be effective for a period of three fiscal years, unless the program regulations provide for a longer effective period.

(b) If the Secretary determines that the three-year State plans under a program should be submitted by the States on a staggered schedule, the Secretary may require groups of States to submit or resubmit their plans in different years.

(c) This section does not apply to:

(1) The annual accountability report under Part A of Title I of the Vocational Education Act;

(2) The annual programs under the Library Services and Construction Act;

(3) The application under Sections 141-143 of the Elementary and Secondary Education Act; and

(4) The State application under Section 209 of Title II of the Education for Economic Security Act.

(d) A State may submit an annual State plan under the Vocational Education Act. If a State submits an annual plan under that program, this section does not apply to that plan.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1231g(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86298, Dec. 30, 1980; 50 FR 43545, Oct. 25, 1985]

§ 76.104 A State shall include certain certifications in its State plan.

(a) A State shall include the following certifications in each State plan:

(1) That the plan is submitted by the State agency that is eligible to submit the plan.

(2) That the State agency has authority under State law to perform the functions of the State under the program.

(3) That the State legally may carry out each provision of the plan.

(4) That all provisions of the plan are consistent with State law.

(5) That a State officer, specified by title in the certification, has authority under State law to receive, hold, and disburse Federal funds made available under the plan.

(6) That the State officer who submits the plan, specified by title in the certification, has authority to submit the plan.

(7) That the agency that submits the plan has adopted or otherwise formally approved the plan.

(8) That the plan is the basis for State operation and administration of the program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.106 State documents are public information.

A State shall make the following documents available for public inspection:

(a) All State plans and related official materials.

(b) All approved subgrant applications.

(c) All documents that the Secretary transmits to the State regarding a program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

CONSOLIDATED GRANT APPLICATIONS FOR INSULAR AREAS

AUTHORITY: Title V, Pub. L. 95-134, 91 Stat. 1159 (48 U.S.C. 1469a).

§ 76.125 What is the purpose of these regulations?

(a) Sections 76.125 through 76.137 of this part contain requirements for the submission of an application by an Insular Area for the consolidation of two or more grants under the programs listed in paragraph (c) of this section.

(b) For the purpose of §§ 76.125-76.137 of this part the term "Insular Area" means the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Commonwealth of the Northern Mariana Islands.

(c) The Secretary may make an annual consolidated grant to assist an Insular Area in carrying out one or more of the following programs:

CFDA No. and name of program	Authorizing legislation	Implementing regulations Title 34 CFR (Part)
	Library Programs	
84.034 Public Library Services State Grant Program	Title I, Library Services and Construction Act (20 U.S.C. 351-354)	770
84.035 Interlibrary Cooperation	Title III, Library Services and Construction Act (20 U.S.C. 355e-355e-2)	770
	Postsecondary Education Programs	
84.001 Grants for Construction, Reconstruction, and of Undergraduate Academic Facilities	Title VII, Part E of the Higher Education Act (20 U.S.C. 1132b-1132b-3)	617
84.046 Education Outreach Programs	Title I, Part B of the Higher Education Act (20 U.S.C. 1011-1018)	610
84.135 Aid to Land Grant Colleges	Second Morrill Act of 1890 (7 U.S.C. 322 and 323)	621
84.176 Carl D. Perkins Scholarship Program	Title V Part E of the Higher Education Act (20 U.S.C. 1119d-1119d-8)	653
	Vocational and Adult Education Programs	
84.002 Adult Education—State-administered Programs	Adult Education Act (except Sections 309, 316 and 318) (20 U.S.C. 1201 et seq.)	426
84.048 Vocational Education—Basic Grants to States	Title I, Part A of the Vocational Education Act (20 U.S.C. 2301-2380)	400
84.049 Vocational Education—Consumer and Homemaking Education	Title I, Part A, Section 150 of the Vocational Education Act (20 U.S.C. 2380)	400
84.050 Vocational Education—Program Improvement and Services	Title I, Part A, Section 130-136 of the Vocational Education Act (20 U.S.C. 2350-2356)	400
84.052 Vocational Education—Special Programs for the Disadvantaged	Title I, Part A, Section 140 of the Vocational Education Act (20 U.S.C. 2370)	400
84.053 Vocational Education—State Advisory Council	Title I, Part A, Section 105 of the Vocational Education Act (20 U.S.C. 2305)	400
84.121 Vocational Education—State Planning and Evaluation	Title I, Part A, Sections 102 and 111 of the Vocational Education Act (20 U.S.C. 2302 and 2311)	400
	Education for the Handicapped Programs	
84.009 Program for Education of Handicapped Children in State Operated or Supported Schools	Section 554(a)(2)(B), of Chapter 1 of the Education Consolidation & Improvement Act of 1981 (20 U.S.C. 3803 and 20 U.S.C. 2771-2772)	302
84.027 Handicapped Preschool and School Programs—State Grant Programs	Education of Handicapped Act Part B (except Section 619) (20 U.S.C. 1411-1418, 1420)	300

CFDA No. and name of program	Authorizing legislation	Implementing regulations, Title 34 CFR (Part)
84.027 Handicapped Preschool and School Program—Incentive Grants	Section 619 of the Education of the Handicapped Act (20 U.S.C. 1419)	301
84.155 Removal of architectural barriers to the handicapped	Section 607, Education of the Handicapped Act (20 U.S.C. 1406)	304
Other Elementary and Secondary Programs		
84.010 Educationally Deprived Children—Local Educational Agencies	Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801-3807)	200
84.011 Migrant Education Programs State Formula Grant Program	Section 554(a)(2)(A) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3803 and 20 U.S.C. 2781)	204
84.012 Educationally Deprived Children—State Administration	Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3801-3807)	200
84.013 Educationally Deprived Children in State Administered Institutions Serving Neglected and Delinquent Children	Section 554(a)(2)(C) of Chapter 1 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3803 and 20 U.S.C. 2781)	203
84.068 Indochinese Refugee Children Assistance Act	Subpart C of the Consolidated Refugee Assistance Act (8 U.S.C. 1522)	537
84.150 Chapter 2—Consolidation of Federal Programs for Elementary and Secondary Education	Chapter 2 of the Education Consolidation and Improvement Act of 1981 (20 U.S.C. 3811-3862)	298
84.162 Emergency Immigrant Education Program	Title VI of Pub. L. 98-511 (20 U.S.C. 4101-4108)	581
84.164 State Grants for Strengthening the Skills of teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction	Title II of the Education for Economic Security Act (20 U.S.C. 3961-3971, 3973)	208

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), and 3474)

[47 FR 17421, Apr. 22, 1982, as amended at 50 FR 29330, July 18, 1985; 50 FR 32564, Aug. 13, 1985; 50 FR 43545, Oct. 25, 1985; 51 FR 35583, Oct. 6, 1986; 54 FR 21776, May 19, 1989]

§ 76.126 What regulations apply to the consolidated grant applications for insular areas?

The following regulations apply to those programs included in a consolidated grant:

(a) The regulations in §§ 76.125 through 76.137; and

(b) The regulations that apply to each specific program included in a consolidated grant for which funds are used.

(Authority: 48 U.S.C. 1469a)Q04

[47 FR 17421, Apr. 22, 1982]

§ 76.127 What is the purpose of a consolidated grant?

An Insular Area may apply for a consolidated grant for two or more of the programs listed in § 76.125(c). This procedure is intended to:

(a) Simplify the application and reporting procedures that would otherwise apply for each of the programs included in the consolidated grant; and

(b) Provide the Insular Area with flexibility in allocating the funds under the consolidated grant to achieve any of the purposes to be served by the programs that are consolidated.

(Authority: 48 U.S.C. 1469a)Q04

[47 FR 17421, Apr. 22, 1982]

§ 76.128 What is a consolidated grant?

A consolidated grant is a grant to an Insular Area for any two or more of the programs listed in § 76.125(c). The amount of the consolidated grant is the sum of the allocations the Insular Area receives under each of the programs included in the consolidated grant if there had been no consolidation.

Example. Assume the Virgin Islands applies for a consolidated grant that includes programs under the Adult Education Act, Vocational Education Act, and Chapter 1 of the Education Consolidation and Improvement Act. If the Virgin Islands' allocation under the formula for each of these three programs is $150,000, the total consolidated grant to the Virgin Islands would be $450,000.

(Authority: 48 U.S.C. 1469a)Q04

[47 FR 17421, Apr. 22, 1982]

§ 76.129 How does a consolidated grant work?

(a) An Insular Area shall use the funds it receives under a consolidated grant to carry out, in its jurisdiction, one or more of the programs included in the grant.

Example. Assume that Guam applies for a consolidated grant under the Vocational Education Act, the Handicapped Preschool and School Programs Incentive Grants, and the Adult Education Act and that the sum of the allocations under these programs is $700,000. Guam may choose to allocate this $700,000 among all of the programs authorized under the three programs. Alternatively, it may choose to allocate the entire $700,000 to one or two of the programs, for example, the Adult Education Act Program.

(b) An Insular Area shall comply with the statutory and regulatory requirements that apply to each program under which funds from the consolidated grant are expended.

Example. Assume that American Samoa uses part of the funds under a consolidated grant for the State program under the Adult Education Act. American Samoa need not submit to the Secretary a State plan that requires policies and procedures to assure all students equal access to adult education programs. However, in carrying out the program, American Samoa must meet and be able to demonstrate compliance with this equal access requirement.

(Authority: 48 U.S.C. 1469a) Q04

[47 FR 17421, Apr. 22, 1982]

§ 76.130 How are consolidated grants made?

(a) The Secretary annually makes a single consolidated grant to each Insular Area that meets the requirements of §§ 76.125 through 76.137 and each program under which the grant funds are to be used and administered.

(b) The Secretary may decide that one or more programs cannot be included in the consolidated grant if the Secretary determines that the Insular Area failed to meet the program objectives stated in its plan for the previous fiscal year in which it carried out the programs.

(c) Under a consolidated grant, an Insular Area may use a single advisory council for any or all of the programs that require an advisory council.

(d) Although Pub. L. 95-134 authorizes the Secretary to consolidate grant funds that the Department awards to an Insular Area, it does not confer eligibility for any grant funds. The eligibility of a particular Insular Area to receive grant funds under a Federal education program is determined under the statute and regulations for that program.

(Authority: 48 U.S.C. 1469a) Q04

[47 FR 17421, Apr. 22, 1982]

§ 76.131 How does an insular area apply for a consolidated grant?

(a) An Insular Area that desires to apply for a grant consolidating two or more programs listed in § 76.125(c) shall submit to the Secretary an application that:

(1) Contains the assurances in § 76.132; and

(2) Meets the application requirements in paragraph (c) of this section.

(b) The submission of an application that contains these requirements and assurances takes the place of a separate State plan or other similar document required by this part or by the authorizing statutes and regulations for programs included in the consolidated grant.

(c) An Insular Area shall include in its consolidated grant application a program plan that:

(1) Contains a list of the programs in § 76.125(c) to be included in the consolidated grant;

(2) Describes the program or programs in § 76.125(c) under which the consolidated grant funds will be used and administered;

(3) Describes the goals, objectives, activities, and the means of evaluating program outcomes for the programs for which the Insular Area will use the funds received under the consolidated grant during the fiscal year for which it submits the application, including needs of the population that will be met by the consolidation of funds; and

(4) Contains a budget that includes a description of the allocation of funds—including any anticipated carryover funds of the program in the consolidated grant from the preceding year—among the programs to be included in the consolidated grant.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 48 U.S.C. 1469a)

[47 FR 17421, Apr. 22, 1982, as amended at 53 FR 49143, Dec. 6, 1988]

§ 76.132 What assurances must be in a consolidated grant application?

(a) An Insular Area shall include in its consolidated grant application assurances to the Secretary that it will:

(1) Follow policies and use administrative practices that will insure that non-Federal funds will not be supplanted by Federal funds made available under the authority of the programs in the consolidated grant;

(2) Comply with the requirements (except those relating to the submission of State plans or similar documents) in the authorizing statutes and implementing regulations for the programs under which funds are to be used and administered, (except requirements for matching funds);

(3) Provide for proper and efficient administration of funds in accordance with the authorizing statutes and implementing regulations for those programs under which funds are to be used and administered;

(4) Provide for fiscal control and fund accounting procedures to assure proper disbursement of, and accounting for, Federal funds received under the consolidated grant;

(5) Submit an annual report to the Secretary containing information covering the program(s) for which the grant is used and administered, including financial and program 'performance information required under 34 CFR Part 74, Subparts I and J;

(6) Provide that funds received under the consolidated grant will be under control of, and that title to property acquired with these funds will be in, a public agency, institution, or organization. The public agency shall administer these funds and property;

(7) Keep records, including a copy of the State Plan or application document under which funds are to be spent, which show how the funds received under the consolidated grant have been spent

(8) Adopt and use methods of monitoring and providing technical assistance to any agencies, organizations, or institutions that carry out the programs under the consolidated grant and enforce any obligations imposed on them under the applicable statutes and regulations.

(9) Evaluate the effectiveness of these programs in meeting the purposes and objectives in the authorizing statutes under which program funds are used and administered;

(10) Conduct evaluations of these programs at intervals and in accordance with procedures the Secretary may prescribe; and

(11) Provide appropriate opportunities for participation by local agencies, representatives of the groups affected by the programs, and other interested institutions, organizations, and individuals in planning and operating the programs.

(b) These assurances remain in effect for the duration of the programs they cover.

(Authority: 48 U.S.C. 1469a)Q04

[47 FR 17421, Apr. 22, 1982]

§ 76.133 What is the reallocation authority?

(a) After an Insular Area receives a consolidated grant, it may reallocate the funds in a manner different from the allocation described in its consolidated grant application. However, the funds cannot be used for purposes that are not authorized under the programs in the consolidated grant under which funds are to be used and administered.

(b) If an Insular Area decides to reallocate the funds it receives under a consolidated grant, it shall notify the Secretary by amending its original application to include an update of the information required under § 76.131.

(Authority: 48 U.S.C. 1469a)Q04

[47 FR 17421, Apr. 22, 1982]

§ 76.134 What is the relationship between consolidated and non-consolidated grants?

(a) An Insular Area may request that any number of programs in § 76.125(c) be included in its consolidated grant and may apply separately for assistance under any other programs listed in § 76.125(c) for which it is eligible.

(b) Those programs that an Insular Area decides to exclude from consolidation—for which it must submit separate plans or applications—are implemented in accordance with the applicable program statutes and regulations. The excluded programs are not subject to the provisions for allocation of funds among programs in a consolidated grant.

(Authority: 48 U.S.C. 1469a)Q04
[47 FR 17421, Apr. 22, 1982]

§ 76.135 Are there any requirements for matching funds?

The Secretary waives all requirements for matching funds for those programs that are consolidated by an Insular Area in a consolidated grant application.

(Authority: 48 U.S.C. 1469a)Q04
[47 FR 17421, Apr. 22, 1982]

§ 76.136 Under what programs may consolidated grant funds be spent?

Insular Areas may only use and administer funds under programs listed in § 76.125(c)(1) during a fiscal year for which the Insular Area is entitled to receive funds under an appropriation for that program.

(Authority: 48 U.S.C. 1469a)Q04
[47 FR 17421, Apr. 22, 1982]

§ 76.137 How may carryover funds be used under the consolidated grant application?

Any funds under any applicable program which are available for obligation and expenditure in the year succeeding the fiscal year for which they are appropriated must be obligated and expended in accordance with the consolidated grant application submitted by the Insular Area for that program for the succeeding fiscal year.

(Authority: 20 U.S.C. 1225(b); 48 U.S.C. 1469a)

AMENDMENTS

CROSS REFERENCE: See 34 CFR Part 74, Subpart L, Programmatic Changes and Budget Revisions Q04
[47 FR 17421, Apr. 22, 1982]

§ 76.140 Amendments to a State plan.

(a) If the Secretary determines that an amendment to a State plan is essential during the effective period of the plan, the State shall make the amendment.

(b) A State shall also amend a State plan if there is a significant and relevant change in:

(1) The information or the assurances in the plan;

(2) The administration or operation of the plan; or

(3) The organization, policies, or operations of the State agency that received the grant, if the change materially affects the information or assurances in the plan.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1231g(a))

§ 76.141 An amendment requires the same procedures as the document being amended.

If a State amends a State plan under § 76.140, the State shall use the same procedures as those it must use to prepare and submit a State plan.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.142 An amendment is approved on the same basis as the document being amended.

The Secretary uses the same procedures to approve an amendment to a State plan—or any other document a State submits—as the Secretary uses to approve the original document.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Subpart C—How a Grant Is Made to a State

APPROVAL OR DISAPPROVAL BY THE SECRETARY

§ 76.201 A State plan must meet all statutory and regulatory requirements.

The Secretary approves a State plan if it meets the requirements of the Federal statutes and regulations that apply to the plan.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.202 Opportunity for a hearing before a State plan is disapproved.

The Secretary may disapprove a State plan only after:

(a) Notifying the State;

(b) Offering the State a reasonable opportunity for a hearing; and

(c) Holding the hearing, if requested by the State.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.235 The notification of grant award.

(a) To make a grant to a State, the Secretary issues and sends to the State a notification of grant award.

(b) The notification of grant award tells the amount of the grant and provides other information about the grant.

(Authority: 20 U.S.C. 1221e-3(a)(1))

ALLOTMENTS AND REALLOTMENTS OF GRANT FUNDS

§ 76.260 Allotments are made under program statute or regulations.

(a) The Secretary allots program funds to a State in accordance with the authorizing statute or implementing regulations for the program.

(b) Any reallotment to other States will be made by the Secretary in accordance with the authorizing statute or implementing regulations for that program.

(Authority: 20 U.S.C. 3474(a)).

[50 FR 29330, July 18, 1985]

§ 76.261 Reallotted funds are part of a State's grant.

Funds that a State receives as a result of a reallotment are part of the State's grant for the appropriate fiscal year. However, the Secretary does not consider a reallotment in determining the maximum or minimum amount to which a State is entitled for a following fiscal year.

(Authority: 20 U.S.C. 1221e-3(a)(1))

Subpart D—How To Apply to the State for a Subgrant

§ 76.300 Contact the State for procedures to follow.

An applicant for a subgrant can find out the procedures it must follow by contacting the State agency that administers the program.

(Authority: 20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE: See Subparts E and G of this part for the general responsibilities of the State regarding applications for subgrants.

§ 76.301 Local educational agency general application.

A local educational agency that applies for a subgrant under a program subject to this part shall have on file with the State a general application that meets the requirements of Section 436 of the General Education Provisions Act.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1232d)

[52 FR 27804, July 24, 1987; 53 FR 49143, Dec. 6, 1988]

§ 76.302 The notice to the subgrantee.

A State shall notify a subgrantee in writing of:

(a) The amount of the subgrant;

(b) The period during which the subgrantee may obligate the funds; and

(c) The Federal requirements that apply to the subgrant.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.303 Joint applications and projects.

(a) Two or more eligible parties may submit a joint application for a subgrant.

(b) If the State must use a formula to distribute subgrant funds (see § 76.51), the State may not make a subgrant that exceeds the sum of the entitlements of the separate subgrantees.

(c) If the State funds the application, each subgrantee shall:

(1) Carry out the activities that the subgrantee agreed to carry out; and

(2) Use the funds in accordance with Federal requirements.

(d) Each subgrantee shall use an accounting system that permits identification of the costs paid for under its subgrant.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.304 Subgrantee shall make subgrant application available to the public.

A subgrantee shall make any application, evaluation, periodic program plan, or report relating to each program available for public inspection.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1232c)

§ 76.305 Amendments to applications.

If a subgrantee makes a significant amendment to its application, the subgrantee shall use the same procedures as those it must use to submit an application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

CROSS-REFERENCE: See 34 CFR Part 74, Subpart L—Programmatic Changes and Budget Revisions.

Subpart E—How a Subgrant Is Made to an Applicant

§ 76.400 State procedures for reviewing an application.

A State that receives an application for a subgrant shall take the following steps:

(a) *Review.* The State shall review the application.

(b) *Approval—entitlement programs.* The State shall approve an application if:

(1) The application is submitted by an applicant that is entitled to receive a subgrant under the program; and

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program.

(c) *Approval—discretionary programs.* The State may approve an application if:

(1) The application is submitted by an eligible applicant under a program in which the State has the discretion to select subgrantees;

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program; and

(3) The State determines that the project should be funded under the authorizing statute and implementing regulations for the program.

(d) *Disapproval—entitlement and discretionary programs.* If an application does not meet the requirements of the Federal statutes and regulations that apply to a program, the State shall not approve the application.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.401 Disapproval of an application—opportunity for a hearing.

(a) *State agency hearing before disapproval.* Under the following programs the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application:

(1) Chapter 1 Program in Local Educational Agencies.

(2) Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.

(3) Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.

(4) Strengthening Instruction in Academic Subjects in Public Schools.

(5) State-operated Programs for Handicapped Children.

(6) Assistance to States for Education of Handicapped Children.

(7) State Vocational Education Programs.

(8) State Grants for Strengthening the Skills of Teachers and Instruction in Mathematics, Science, Foreign Languages, and Computer Learning and for Increasing the Access of All Students to That Instruction.

(b) *Other programs—hearings not required.* Under other programs covered by this part, a State agency—other than a State educational agency—is not required to provide an opportunity for a hearing regarding the agency's disapproval of an application.

(c) If an applicant for a subgrant alleges that any of the following actions of a State educational agency violates a State or Federal statute or regulation, the State educational agency and the applicant shall use the procedures in paragraph (d) of this section:

(1) Disapproval of or failure to approve the application or project in whole or in part.

(2) Failure to provide funds in amounts in accordance with the requirements of statutes and regulations.

(d) *State educational agency hearing procedures.* (1) If the applicant applied under a program listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing before the agency disapproves the application.

(2) If the applicant applied under a program not listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing either before or after the agency disapproves the application.

(3) The applicant shall request the hearing within 30 days of the action of the State educational agency.

(4)(i) Within 30 days after it receives a request, the State educational agency shall hold a hearing on the record and shall review its action.

(ii) No later than 10 days after the hearing the agency shall issue its written ruling, including findings of fact and reasons for the ruling.

(iii) If the agency determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.

(5) If the State educational agency does not rescind its final action after a review under this paragraph, the applicant may appeal to the Secretary. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the State educational agency of the results of the agency's review. If supported by substantial evidence, findings of fact of the State educational agency are final.

(6)(i) The Secretary may also issue interim orders to State educational agencies as he or she may decide are necessary and appropriate pending appeal or review.

(ii) If the Secretary determines that the action of the State educational agency was contrary to Federal statutes or regulations that govern the applicable program, the Secretary issues an order that requires the State educational agency to take appropriate action.

(7) Each State educational agency shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.

(8) If a State educational agency does not comply with any provision of this section, or with any order of the Secretary under this section, the Secretary immediately terminates all assistance to the State educational agency under the applicable program.

(e) *Other State agency hearing procedures.* State agencies that are required to provide a hearing under paragraph (a) of this section—other than State educational agencies—are not required to use the procedures in paragraph (d) of this section.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1231b-2, 2831(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980; 50 FR 43545, Oct. 25, 1985; 52 FR 27805, July 24, 1987; 54 FR 21775 and 21776, May 19, 1989]

Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

NONDISCRIMINATION

§ 76.500 Federal statutes and regulations on nondiscrimination.

A State and a subgrantee shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4)	34 CFR Part 100
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683)	34 CFR Part 106
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)	34 CFR Part 104
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 et seq.)	45 CFR Part 90

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

ALLOWABLE COSTS

§ 76.530 General cost principles.

Subpart Q of 34 CFR Part 74 references the general cost principles that apply to grants, subgrants, and cost-type contracts under grants and subgrants.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

CROSS-REFERENCE: See 34 CFR Part 74, Subpart G—Matching or Cost Sharing.

§ 76.532 Use of funds for religion prohibited.

(a) No State or subgrantee may use its grant or subgrant to pay for any of the following:

(1) Religious worship, instruction, or proselytization.

(2) Equipment or supplies to be used for any of the activities specified in paragraph (a)(1) of this section.

(3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of the activities specified in paragraph (a)(1) of this section.

(4) An activity of a school or department of divinity.

(b) As used in this section, "school or department of divinity" means an institution or a component of an institution whose program is specifically for the education of students to:

(1) Prepare them to enter into a religious vocation; or

(2) Prepare them to teach theological subjects.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.533 Acquisition of real property; construction.

No State or subgrantee may use its grant or subgrant for acquisition of real property or for construction unless specifically permitted by the authorizing statute or implementing regulations for the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.534 Use of tuition and fees restricted.

No State or subgrantee may count tuition and fees collected from students toward meeting matching, cost sharing, or maintenance of effort requirements of a program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

INDIRECT COST RATES

§ 76.560 General indirect cost rates; exceptions.

(a) Appendices C-F to 34 CFR Part 74 include:

(1) A description of the difference between direct and indirect costs; and

(2) The principles for determining the general indirect cost rate that a State or subgrantee may use under some programs.

(b) Section 76.562 provides restrictions on indirect cost rates under certain programs.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.561 Approval of indirect cost rates.

(a) The Secretary approves an indirect cost rate for a State agency and for a subgrantee other than a local educational agency. For the purposes of this section, the term "local educational agency" does not include a State agency.

(b) Each State educational agency, on the basis of a plan approved by the Secretary, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) Each indirect cost rate must be approved annually.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.563 Restricted indirect cost rate—programs covered.

A State and a subgrantee shall use a restricted indirect cost rate, computed under 34 CFR 75.564-75.568, for each program that has a statutory requirement not to use Federal funds to supplant non-Federal funds. These programs include the following:

Program	Authorizing statute
Financial Assistance to Local Educational Agencies To Meet the Special Educational Needs of Educationally Deprived Children	Title I-A of the Elementary and Secondary Education Act
Grants to State Agencies for Programs To Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children	Sections 151-153 of the Elementary and Secondary Education Act
Grants to State Agencies for Programs To Meet the Special Educational Needs of Migratory Children	Sections 141-143 of the Elementary and Secondary Education Act
State Basic Skills Improvement Program	Title II of the Elementary and Secondary Education Act
Financial Assistance for School Library Resources Textbooks and other Instructional Materials	Title II of the Elementary and Secondary Education Act (as in effect Sept 30, 1978)
Supplementary Centers and Services Guidance Counseling and Testing Programs	Title III of the Elementary and Secondary Education Act (as in effect Sept 30, 1978)
Strengthening Instruction on Academic Subjects in Public Schools	Title III-A of the National Defense Education Act
State-operated Programs for Handicapped Children	Sections 146-147 of the Elementary and Secondary Education Act
Assistance to States for Education of Handicapped Children	Part B of the Education of the Handicapped Act
State Vocational Education Programs	Part A of Title I of the Vocational Education Act
Community Service and Continuing Education Programs	Title I of the Higher Education Act
State Grants for Strengthening the Skills of teachers and Instruction in Mathematics Science Foreign Languages and Computer Learning and for Increasing the Access of All Students to That Instruction	Sections 201-211 213 of Title II of the Education for Economic Security Act

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 50 FR 43545, Oct. 25, 1985; 52 FR 27805, July 24, 1987]

COORDINATION

§ 76.580 Coordination with other activities.

(a) A State and a subgrantee shall, to the extent possible, coordinate each of its projects with other activities that are in the same geographic area served by the project and that serve similar purposes and target groups.

(b) A State and a subgrantee whose project includes activities to improve the basic skills of children, youth, or adults shall, to the extent possible, coordinate its project with other basic skills activities that are in the same geographic area served by the project.

(c) For the purposes of this section, "basic skills" means reading, mathematics, and effective communication, both written and oral.

(d) The State or subgrantee shall continue its coordination during the period that it carries out the project.

(Authority: 20 U.S.C. 1221e-3(a)(1); 2890)

§ 76.581 Methods of coordination.

Depending on the objectives and requirements of a project, a grantee shall use one or more of the following methods of coordination:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Engaging in joint activities such as instruction, needs assessment evaluation, monitoring, technical assistance, or staff training.

(d) Using the grant or subgrant funds so as not to duplicate or counteract the effects of funds used under other programs.

(e) Using the grant or subgrant funds to increase the impact of funds made available under other programs.

(Authority: 20 U.S.C. 1221e-3(a)(1))

EVALUATION

§ 76.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary.

(Authority: 20 U.S.C. 1226c, 1231a, 2831(a), 3474)

[45 FR 86298, Dec. 30, 1980]

§ 76.592 Federal evaluation—satisfying requirement for State or subgrantee evaluation.

If a State or a subgrantee cooperates in a Federal evaluation of a program, the Secretary may determine that the State or subgrantee meets the evaluation requirements of the program.

(Authority: 20 U.S.C. 1226c; 1231a)

CONSTRUCTION

CROSS-REFERENCE: See 34 CFR Part 74, Subpart P—Procurement Standards.

§ 76.600 Where to find construction regulations.

(a) A State or a subgrantee that requests program funds for construction, or whose grant or subgrant includes funds for construction, shall comply with the rules on construction that apply to applicants and grantees under 34 CFR 75.600-75.615.

(b) The State shall perform the functions that the Secretary performs under §§ 75.602 (Preservation of historic sites) and 75.605 (Approval of drawings and specifications) of this title.

(c) The State shall provide to the Secretary the information required under 34 CFR 75.602(a) (Preservation of historic sites).

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86298, Dec. 30, 1980]

PARTICIPATION OF STUDENTS ENROLLED IN PRIVATE SCHOOLS

§ 76.650 Private schools; purpose of §§ 76.651-76.662.

(a) Under some programs, the authorizing statute requires that a State and its subgrantees provide for participation by students enrolled in private schools. Sections 76.651-76.662 apply to those programs and provide rules for that participation. These sections do not affect the authority of the State or a subgrantee to enter into a contract with a private party.

(b) If any other rules for participation of students enrolled in private schools apply under a particular program, they are in the authorizing statute or implementing regulations for that program.

(Authority: 20 U.S.C. 1221e-3(a)(1)).

NOTE: Some program statutes authorize the Secretary—under certain circumstances—to provide benefits directly to private school students. These "bypass" provisions—where they apply—are implemented in the individual program regulations.

§ 76.651 Responsibility of a State and a subgrantee.

(a)(1) A subgrantee shall provide students enrolled in private schools with a genuine opportunity for equitable participation in accordance with the requirements in §§ 76.652-76.662 and in the authorizing statute and implementing regulations for a program.

(2) The subgrantee shall provide that opportunity to participate in a manner that is consistent with the number of eligible private school students and their needs.

(3) The subgrantee shall maintain continuing administrative direction and control over funds and property that benefit students enrolled in private schools.

(b)(1) A State shall ensure that each subgrantee complies with the requirements in §§ 76.651-76.662.

(2) If a State carries out a project directly, it shall comply with these requirements as if it were a subgrantee.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.652 Consultation with representatives of private school students.

(a) An applicant for a subgrant shall consult with appropriate representatives of students enrolled in private schools during all phases of the development and design of the project covered by the application, including consideration of:

(1) Which children will receive benefits under the project;

(2) How the children's needs will be identified;

(3) What benefits will be provided;

(4) How the benefits will be provided; and

(5) How the project will be evaluated.

(b) A subgrantee shall consult with appropriate representatives of students enrolled in private schools before the subgrantee makes any decision that affects the opportunities of those students to participate in the project.

(c) The applicant or subgrantee shall give the appropriate representatives a genuine opportunity to express their views regarding each matter subject to the consultation requirements in this section.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.653 Needs, number of students, and types of services.

A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for participation of public school students:

(a) The needs of students enrolled in private schools.

(b) The number of those students who will participate in a project.

(c) The benefits that the subgrantee will provide under the program to those students.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.654 Benefits for private school students.

(a) *Comparable benefits.* The program benefits that a subgrantee provides for students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits that the subgrantee provides for students enrolled in public schools.

(b) *Same Benefits.* If a subgrantee uses funds under a program for public school students in a particular attendance area, or grade or age level, the subgrantee shall insure equitable opportunities for participation by students enrolled in private schools who:

(1) Have the same needs as the public school students to be served; and

(2) Are in that group, attendance area, or age or grade level.

(c) *Different benefits.* If the needs of students enrolled in private schools are different from the needs of students enrolled in public schools, a subgrantee shall provide program benefits for the private school students that are different from the benefits the subgrantee provides for the public school students.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.655 Level of expenditures for students enrolled in private schools.

(a) Subject to paragraph (b) of this section, a subgrantee shall spend the same average amount of program funds on:

(1) A student enrolled in a private school who receives benefits under the program; and

(2) A student enrolled in a public school who receives benefits under the program.

(b) The subgrantee shall spend a different average amount on program benefits for students enrolled in private schools if the average cost of meeting the needs of those students is different from the average cost of meeting the needs of students enrolled in public schools.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.656 Information in an application for a subgrant.

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of students enrolled in private schools.

(b) The number of students enrolled in private schools who have been identified as eligible to benefits under the program.

(c) The number of students enrolled in private schools who will receive benefits under the program.

(d) The basis the applicant used to select the students.

(e) The manner and extent to which the applicant complied with § 76.652 (consultation).

(f) The places and times that the students will receive benefits under the program.

(g) The differences, if any, between the program benefits the applicant will provide to public and private school students, and the reasons for the differences.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.657 Separate classes prohibited.

A subgrantee may not use program funds for classes that are organized separately on the basis of school enrollment or religion of the students if:

(a) The classes are at the same site; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.658 Funds not to benefit a private school.

(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The subgrantee shall use program funds to meet the specific needs of students enrolled in private schools, rather than:

(1) The needs of a private school; or

(2) The general needs of the students enrolled in a private school.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.659 Use of public school personnel.

A subgrantee may use program funds to make public personnel available in other than public facilities:

(a) To the extent necessary to provide equitable program benefits designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.660 Use of private school personnel.

A subgrantee may use program funds to pay for the services of an employee of a private school if:

(a) The employee performs the services outside of his or her regular hours of duty; and

(b) The employee performs the services under public supervision and control.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.661 Equipment and supplies.

(a) Under some program statutes, a public agency must keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with program funds. This public agency is usually the subgrantee.

(b) The subgrantee may place equipment and supplies in a private school for the period of time needed for the project.

(c) The subgrantee shall insure that the equipment or supplies placed in a private school:

(1) Are used only for the purposes of the project; and

(2) Can be removed from the private school without remodeling the private school facilities.

(d) The subgrantee shall remove equipment or supplies from a private school if:

(1) The equipment or supplies are no longer needed for the purposes of the project; or

(2) Removal is necessary to avoid use of the equipment of supplies for other than project purposes.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.662 Construction.

A subgrantee shall insure that program funds are not used for the construction of private school facilities.

(Authority: 20 U.S.C. 1221e-3(a)(1))

OTHER REQUIREMENTS FOR CERTAIN PROGRAMS

CROSS-REFERENCE. See 34 CFR Part 74, Subpart C—Bonding and Insurance; and 34 CFR 74.144—Inventions and patents.

PROCEDURES FOR BYPASS

§ 76.670 Applicability.

The regulations in §§ 76.671 through 76.677 apply to the following programs under which the Secretary is authorized to waive the requirements for providing services to private school children and to implement a bypass:

CFDA number and name of program	Authorizing statute	Implementing regulations Title 34 CFR Part
84.010 Chapter 1 Program in Local Educational Agencies	Chapter 1, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 et seq.)	200
84.151 Federal, State, and Local Partnership for Educational Improvement	Chapter 2, Title I, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911-2952, 2971-2976)	298
84.164 Mathematics and Science Education	Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993)	208
84.186 State and Local Programs	Part B, Drug Free Schools and Communities Act of 1986 (20 U.S.C. 3181-3187)	None

(Authority: 20 U.S.C. 2727(b), 2972(d)-(e), 2990(c), 3223(c))

[54 FR 21775, May 19, 1989]

§ 76.671 Notice by the Secretary.

(a) Before taking any final action to implement a bypass under a program listed in § 76.670, the Secretary provides the affected grantee and subgrantee, if appropriate, with written notice.

(b) In the written notice, the Secretary—

(1) States the reasons for the proposed bypass in sufficient detail to allow the grantee and subgrantee to respond;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Advises the grantee and subgrantee that they—

(i) Have at least 45 days after receiving the written notice to submit written objections to the proposed bypass; and

(ii) May request in writing the opportunity for a hearing to show cause why the bypass should not be implemented.

(c) The Secretary sends the notice to the grantee and subgrantee by certified mail with return receipt requested.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21775, May 19, 1989]

§ 76.672 Bypass procedures.

Sections 76.673 through 76.675 contain the procedures that the Secretary uses in conducting a show cause hearing. The hearing officer may modify the procedures for a particular case if all parties agree the modification is appropriate.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

§ 76.673 Appointment and functions of a hearing officer.

(a) If a grantee or subgrantee requests a hearing to show cause why the Secretary should not implement a bypass, the Secretary appoints a hearing officer and notifies appropriate representatives of the affected private school children that they may participate in the hearing.

(b) The hearing officer has no authority to require or conduct discovery or to rule on the validity of any statute or regulation.

(c) The hearing officer notifies the grantee, subgrantee, and representatives of the private school children of the time and place of the hearing.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

§ 76.674 Hearing procedures.

(a) The following procedures apply to a show cause hearing regarding implementation of a bypass:

(1) The hearing officer arranges for a transcript to be taken.

(2) The grantee, subgrantee, and representatives of the private school children each may—

(i) Be represented by legal counsel; and

(ii) Submit oral or written evidence and arguments at the hearing.

(b) Within 10 days after the hearing, the hearing officer—

(1) Indicates that a decision will be issued on the basis of the existing record; or

(2) Requests further information from the grantee, subgrantee, representatives of the private school children, or Department officials.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

§ 76.675 Posthearing procedures.

(a) (1) Within 120 days after the record of a show cause hearing is closed, the hearing officer issues a written decision on whether a bypass should be implemented.

(2) The hearing officer sends copies of the decision to the grantee, subgrantee, representatives of the private school children, and the Secretary.

(b) Within 30 days after receiving the hearing officer's decision, the grantee, subgrantee, and representatives of the private school children may each submit to the Secretary written comments on the decision.

(c) The Secretary may adopt, reverse, modify, or remand the hearing officer's decision.

(Authority: 20 U.S.C. 2727(b)(4)(A), 2972(h)(1), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

§ 76.676 Judicial review of a bypass action.

If a grantee or subgrantee is dissatisfied with the Secretary's final action after a proceeding under §§ 76.672 through 76.675, it may, within 60 days after receiving notice of that action, file a petition for review with the United States Court of Appeals for the circuit in which the State is located.

(Authority: 20 U.S.C. 2727(b)(4)(B)-(D), 2972(h)(2)-(4), 2990(c), 3223(c))

[54 FR 21776, May 19, 1989]

§ 76.677 Continuation of a bypass.

The Secretary continues a bypass until the Secretary determines that the grantee or subgrantee will meet the requirements for providing services to private school children.

(Authority: 20 U.S.C. 2727(b)(3)(D), 2972(f), 1221e-3(a)(1))

[54 FR 21776, May 19, 1989]

§ 76.681 Protection of human research subjects.

If a State or a subgrantee uses a human subject in a research project, the State or subgrantee shall protect the person from physical, psychological, or social injury resulting from the project.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

CROSS-REFERENCE. See 34 CFR Part 46—Protection of Human Research Subjects.

§ 76.682 Treatment of animals.

If a State or a subgrantee uses an animal in a project, the State or subgrantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Authority: Pub. L. 89-544, as amended)

§ 76.683 Health or safety standards for facilities.

A State and a subgrantee shall comply with any Federal health or safety requirements that apply to the facilities that the State or subgrantee uses for a project.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.684 Day care services.

(a) If a State or a subgrantee uses program funds to provide any day care services, the State or subgrantee shall comply with the day care requirements in 45 CFR Part 71 of this title.

(b) The Secretary may waive this requirement by publication of a notice in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.690 Energy conservation awareness.

To the extent that it is consistent with the statute and regulations for any program, the subgrantee shall consider incorporating into its program a component on energy awareness. This component may include study of the problems, solutions, and alternatives relating to the Nation's energy crisis.

(Authority: 42 U.S.C. 8373(b); E.O. No. 12185)

(45 FR 58013, Aug. 29, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980)

Subpart G—What Are the Administrative Responsibilities of the State and Its Subgrantees?

GENERAL ADMINISTRATIVE RESPONSIBILITIES

§ 76.700 Compliance with statutes, regulations, State plan, and applications.

A State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.701 The State or subgrantee administers or supervises each project.

A State or a subgrantee shall directly administer or supervise the administration of each project.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.702 Fiscal control and fund accounting procedures.

A State and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

CROSS-REFERENCE: See 34 CFR Part 74, Subpart B—Cash Depositories, Subpart H—Standards for Grantee and Subgrantee and Subgrantee Financial Management Systems, and Subpart K—Grant and Subgrant Payment Requirements.

§ 76.703 When a State may begin to obligate funds.

(a) A State may not begin to obligate funds under a program until the later of the following two dates:

(1) The date that the State plan is mailed or hand delivered to the Secretary in substantially approvable form.

(2) The date that the funds are first available for obligation by the Secretary.

(b)(1) The State must show one of the following as proof of mailing:

(i) A legibly dated U.S. Postal Service postmark.

(ii) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

(iv) Any other proof of mailing acceptable to the Secretary.

(2) If a State plan is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(i) A private metered postmark.

(ii) A mail receipt that is not dated by the U.S. Postal Service.

NOTE: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, a State should check with its local post office.

(c) After determining that a State plan is in substantially approvable form, the Secretary informs the State of the date on which it could begin to obligate funds. Reimbursement for those obligations is subject to final approval of the State plan.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.704 When certain subgrantees may begin to obligate funds.

(a) If the authorizing statute for a program requires a State to make subgrants on the basis of a formula (see § 76.5), the State may not authorize an applicant for a subgrant to obligate funds until the later of the following two dates:

(1) The date that the State may begin to obligate funds under § 76.703; or

(2) The date that the applicant submits its application to the State in substantially approvable form.

(b) Reimbursement for obligations under paragraph (a) of this section is subject to final approval of the application.

(c) If the authorizing statute for a program gives the State discretion to select subgrantees, the State may not authorize an applicant for a subgrant to obligate funds until the subgrant is made. However, the State may approve pre-agreement costs in accordance with the cost principles that are appended to 34 CFR Part 74 (Appendices C-F).

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.705 Funds may be obligated during a "carryover period."

(a) If a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate the remaining funds during a carryover period of one additional fiscal year.

(b) The State shall return to the Federal Government any carryover funds not obligated by the end of the carryover period by the State and its subgrantees.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: U.S.C. 1225(b))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

§ 76.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.

A State and a subgrantee shall use carryover funds in accordance with:

(a) The Federal statutes and regulations that apply to the program and are in effect for the carryover period; and

(b) Any State plan, or applicatio for a subgrant, that the State or subgrantee is required to submit for th carryover period.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department o Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to th extent inconsistent with the DEOA, the GEPA "shall apply to functions transferre by this Act to the extent applicable on th day preceding the effective date of thi Act." Although standardized nomenclatur is used in this section to reflect the creatio of the Department of Education, there is n intent to extend the coverage of the GEP beyond that authorized under Section 42 or other applicable law.

(Authority: 20 U.S.C. 1226(b))

[45 FR 22517, Apr. 3, 1980. Redesignated a 45 FR 77368, Nov. 21, 1980, and amended a 45 FR 86296, Dec. 30, 1980]

§ 76.707 When obligations are made.

The following table shows when a State or a subgrantee makes obligations for various kinds of property an services.

If the obligation is for—	The obligation is made—
(a) Acquisition of real or personal property	On the date on which the State or subgrantee makes a binding written commitment to acquire the property
(b) Personal services by an employee of the State or subgrantee	When the services are performed
(c) Personal services by a contractor who is not an employee of the State or subgrantee	On the date on which th State or subgrantee make a binding written commitment to obtain the services
(d) Performance of work other than personal services	On the date on which the State or subgrantee makes a binding written commitment to obtain the work
(e) Public utility services	When the State or subgrantee receives the services
(f) Travel	When the travel is taken
(g) Rental of real or personal property	When the State or subgrantee uses the property
(h) A pre-agreement cost that was properly approved by the State under the cost principles in appendices C-F to 45 CFR Part 74	On the first day of the subgrant period

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

REPORTS

CROSS-REFERENCE: See 34 CFR Part 74, Subpart I—Financial Reporting Requirements, and Subpart J—Monitoring and Reporting of Program Performance.

§ 76.720 Financial and performance reports by a State.

(a) This section applies to a State's reports required under 34 CFR Part 74, Subparts I (financial reporting) and J (performance reporting).

(b) A state shall submit these reports annually, unless the Secretary allows less frequent reporting.

(c) However, the Secretary may, under 34 CFR 74.7 (Special grant or subgrant conditions) or 34 CFR 74.72(e) (Grantee accounting systems), require a State to report more frequently than annually.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.722 A subgrantee makes reports required by the State.

A State may require a subgrantee to furnish reports that the State needs to carry out its responsibilities under the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

RECORDS

CROSS-REFERENCE: See 34 CFR Part 74, Subpart D—Retention and Access Requirements for Records.

§ 76.730 Records related to grant funds.

A State and a subgrantee shall keep records that fully show:

(a) The amount of funds under the grant or subgrant;

(b) How the State or subgrantee uses the funds;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1232f)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.731 Records related to compliance.

A State and a subgrantee shall keep records to show its compliance with program requirements.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.734 Record retention period.

Unless a longer period is required under 34 CFR Part 74, a State and a subgrantee shall retain records for five years after completion of the activity for which they use grant or subgrant funds.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1232f(a))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

CROSS-REFERENCE: See 34 CFR 74.21 Length of retention period, and 74.22 Starting date of retention period.

PRIVACY

§ 76.740 Protection of and accessibility to student records.

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations under 34 CFR Part 99. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(Authority: 20 U.S.C. 1232g)

USE OF FUNDS BY STATES AND SUBGRANTEES

§ 76.760 More than one program may assist a single activity.

A State or a subgrantee may use funds under more than one program to support different parts of the same project if the State or subgrantee meets the following conditions:

(a) The State or subgrantee complies with the requirements of each program with respect to the part of the project assisted with funds under that program.

(b) The State or subgrantee has an accounting system that permits identification of the costs paid for under each program.

(Authority: 20 U.S.C. 1221e-3(a)(1)), 2831(a))

§ 76.761 Federal funds may pay 100 percent of cost.

A State or a subgrantee may use program funds to pay up to 100 percent of the cost of a project if:

(a) The State or subgrantee is not required to match the funds; and

(b) The project can be assisted under the authorizing statute and implementing regulations for the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

STATE ADMINISTRATIVE RESPONSIBILITIES

CROSS REFERENCE: See 34 CFR Part 74, Subpart K—Grant and Subgrant Payment Requirements.

§ 76.770 A State shall perform certain duties with respect to the applications for subgrants.

With respect to each program that authorizes subgrants, a State shall perform the following duties and any other duties required by statute or regulations:

(a) Disseminate information regarding the availability of funds under each program.

(b) Develop procedures for applicants to follow in completing and submitting applications for subgrants.

(c) Provide application forms.

(d) Assist applicants in applying for funds.

(e) Review applications and, within the limits of available funds, award subgrants.

(f) Notify each applicant as to whether it will receive a subgrant.

(g) Not act in any manner that prevents eligible applicants from applying under the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.771 A State shall encourage eligible applicants to apply.

(a) Each State shall make a reasonable effort to encourage eligible applicants to apply for subgrants.

(b) The State shall inform eligible applicants of:

(1) The availability of subgrants;

(2) The objectives of each program;

(3) The objectives of the State plan for each program;

(4) The assistance the State provides to an applicant in completing and submitting an application; and

(5) The procedures the State uses to select applications for funding.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1222c-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.772 Other responsibilities of the State.

(a) A State shall:

(1) Provide technical assistance to prospective applicants and subgrantees;

(2) Assist in the evaluation of projects;

(3) Develop and use procedures to monitor each project; and

(4) Develop procedures, issue rules, or take whatever action may be necessary to properly administer each program and to avoid illegal, imprudent, wasteful, or extravagant use of funds by the State or a subgrantee.

(b) This section applies to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.

(c) This section does not apply to the program under Title I of the Elementary and Secondary Education Act.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, as amended at 52 FR 27805, July 24, 1987]

COMPLAINT PROCEDURES OF THE STATE

§ 76.780 A State shall adopt complaint procedures.

(a) A State shall adopt written procedures for:

(1) Receiving and resolving any complaint that the State or a subgrantee is violating a Federal statute or regulations that apply to a program;

(2) Reviewing an appeal from a decision of a subgrantee with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(b) Sections 76.780-76.782 apply to the program under Title IV of the Elementary and Secondary Education Act unless administrative funds for that program are appropriated under Title V-A of that Act.

(c) Sections 76.780-76.782 do not apply to the program under Title I of the Elementary and Secondary Education Act.

(Approved by the Office of Management and Budget under control number 1880-0513)

CROSS-REFERENCE: See § 76.1 Programs to which Part 76 applies.

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.781 Minimum complaint procedures.

A State shall include the following in its complaint procedures:

(a) A time limit of 60 calendar days after the State receives a complaint:

(1) If necessary, to carry out an independent on-site investigation; and

(2) To resolve the complaint.

(b) An extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.

(c) The right to request the Secretary to review the final decision of the State.

(Approved by the Office of Management and Budget under control number 1880-0513)

(Authority: 20 U.S.C. 1221e-3(a)(1))

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 53 FR 49143, Dec. 6, 1988]

§ 76.782 An organization or individual may file a complaint.

An organization or individual may file a written signed complaint with a State. The complaint must include:

(a) A statement that the State or a subgrantee has violated a requirement of a Federal statute or regulations that apply to a program; and

(b) The facts on which the statement is based.

(Authority: 20 U.S.C. 1221e-3(a)(1))

§ 76.783 State educational agency action—subgrantee's opportunity for a hearing.

(a) A subgrantee may request a hearing if it alleges that any of the following actions by the State educational agency violated a State or Federal statute or regulation:

(1) Ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds; or

(2) Terminating further assistance for an approved project.

(b) The procedures in § 76.401(c)(2)-(7) apply to any request for a hearing under this section.

NOTE: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.

(Authority: 20 U.S.C. 1231b-2)

[45 FR 22517, Apr. 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86296, Dec. 30, 1980]

Subpart H—What Procedures Does the Secretary Use to Get Compliance?

CROSS-REFERENCE: See 34 CFR Part 74, Subpart M—Grant and Subgrant Closeout, Suspension, and Termination.

§ 76.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of ED may waive any regulation that applies to a Department program unless the regulation specifically provide that it may be waived.

(b) No act or failure to act by an official, agent, or employee of ED can affect the authority of the Secretary to enforce regulations.

(Authority: 43 Dec. Comp. Gen. 31(1963))

§ 76.901 Education Appeal Board.

(a) The Education Appeal Board, established under Part E of GEPA, has the following functions:

(1) Audit appeal hearings under Section 452 of GEPA.

(2) Withholding and termination hearings under Section 453 of GEPA.

(3) Cease and desist hearings under Section 453 of GEPA.

(4) Any other proceeding designated by the Secretary.

(b) The regulations for the Education Appeal Board are in 34 CFR Part 78.

(Authority: 20 U.S.C. 1234)

§ 76.902 Judicial review.

After a hearing by the Secretary, a State is usually entitled—generally by the statute that required the hearing—to judicial review of the Secretary's decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a))

§ 76.910 Cooperation with audits.

A grantee or subgrantee shall cooperate with the Secretary and the Comptroller General of the United States or any of their authorized representatives in the conduct of audits authorized by Federal law. This cooperation includes access without unreasonable restrictions to records and personnel of the grantee or subgrantee for the purpose of obtaining relevant information.

(Authority: 5 U.S.C. Appendix 3, Sections 4(a)(1), 4(b)(1)(A), and 6(a)(1); 20 U.S.C. 1221e-3(a)(1), 1232f)

[54 FR 21776, May 19, 1989]

PART 77—DEFINITIONS THAT APPLY TO DEPARTMENT REGULATIONS

§ 77.1 Definitions that apply to all Department programs.

(a) [Reserved]

(b) Unless a statute or regulation provides otherwise, the following definitions in Part 74 of this title apply to the regulations in Title 34 of the Code of Federal Regulations. The section of Part 74 that contains the definition is given in parentheses.

"Budget" (74.104)

"Contract" (includes definition of "Subcontract") (74.3)

"Equipment" (74.132)

"Federally recognized Indian tribal government" (74.3)

"Grant" (74.3)

"Grantee" (74.3)

"Local government" (74.3)

"Personal property" (74.132)

"Real property" (74.132)

"Recipient" (74.3)

"Subgrant" (74.3)

"Subgrantee" (74.3)

"Supplies" (74.132)

(c) Unless a statute or regulation provides otherwise, the following definitions also apply to the regulations in this title:

"Acquisition" means taking ownership of property, receiving the property as a gift, entering into a lease-purchase arrangement, or leasing the property. The term includes processing, delivery, and installation of property.

"Applicant" means a party requesting a grant or subgrant under a program of the Department.

"Application" means a request for a grant or subgrant under a program of the Department.

"Award" means an amount of funds that the Department provides under a grant or contract.

"*Budget period*" means an interval of time into which a project period is divided for budgetary purposes.

"*Department*" means the U.S. Department of Education.

"*Director of the Institute of Museum Services*" means the Director of the Institute of Museum Services or an officer or employee of the Institute of Museum Services acting for the Director under a delegation of authority.

"*Director of the National Institute of Education*" means the Director of the National Institute of Education or an officer or employee of the National Institute of Education acting for the Director under a delegation of authority.

"*ED*" means the U.S. Department of Education.

"*EDGAR*" means the Education Department General Administrative Regulations (34 CFR Parts 74, 75, 76, 77, and 78).

"*Elementary school*" means a day or residential school that provides elementary education, as determined under State law.

"*Facilities*" means one or more structures in one or more locations.

"*Fiscal year*" means the Federal fiscal year—a period beginning on October 1 and ending on the following September 30.

"*GEPA*" means The General Education Provisions Act.

"*Grant period*" means the period for which funds have been awarded.

"*Local educational agency*" means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control of or direction of, or to perform service functions for, public elementary or secondary schools in:

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary school.

(c) As used in 34 CFR Parts 400, 408, 525, 526 and 527 (vocational education programs), the term also includes any other public institution or agency that has administrative control and direction of a vocational education program.

"*Minor remodeling*" means minor alterations in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, stuctural alterations to buildings, building maintenance, or repairs.

"*Nonprofit,*" as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

"*Nonpublic,*" as applied to an agency, organization, or institution, means that the agency, organization, or institution is nonprofit and is not under Federal or public supervision or control.

"*Preschool*" means the educational level from a child's birth to the time at which the State provides elementary education.

"*Private,*" as applied to an agency, organization, or institution, means that it is not under Federal or public supervision or control.

"*Project*" means the activity described in an application.

"*Project period*" means the period for which the appropriate official of the Department approves a project.

"*Public,*" as applied to an agency, organization, or institution, means that the agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government.

"*Secondary school*" means a day or residential school that provides secondary education as determined under State law. In the absence of State law, the Secretary may determine, with respect to that State, whether the term includes education beyond the twelfth grade.

"*Secretary*" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"Service function," with respect to a local educational agency:

(a) Means an educational service that is performed by a legal entity—such as an intermediate agency:

(1) (i) Whose jurisdiction does not extend to the whole State; and

(ii) That is authorized to provide consultative, advisory, or educational services to public elementary or secondary schools; or

(2) That has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools.

(b) The term does not include a service that is performed by a cultural or educational resource.

"State" means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

"State educational agency" means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

"Work of art" means an item that is incorporated into facilities primarily because of its aesthetic value.

(Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), and 3474)

[45 FR 22529, Apr. 3, 1980, as amended at 45 FR 37442, June 3, 1980. Redesignated at 45 FR 77368, Nov. 21, 1980, and amended at 45 FR 86298, Dec. 30, 1980, 54 FR 21776, May 19, 1989]

PART 78—EDUCATION APPEAL BOARD

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AUTHORITY: 20 U.S.C. 1234-1234c (1982), unless otherwise noted.

SOURCE: 46 FR 27305, May 18, 1981, unless otherwise noted.

Subpart A—General

§ 78.1 Purpose.

These regulations contain rules for the conduct of proceedings before the Education Appeal Board which was established in accordance with Section 451 of the General Education Provision Act.

(Authority: 20 U.S.C. 1234 (a) and (e))

§ 78.2 Jurisdiction.

The Board has jurisdiction to:

(a) Review final audit determinations concerning any applicable program (See § 78.3 (*Definitions*) for the definition of an applicable program.).

(b) Conduct withholding or termination hearings initiated by Department of Education (ED) officials in connection with any applicable program (See § 78.3 (*Definitions*) for the definition of an applicable program.).

(c) Conduct cease and desist proceedings initiated by authorized ED officials in connection with any applicable program (See § 78.3 (*Definitions*) for the definition of an applicable program.).

(d) Conduct hearings, in connection with an applicable program (See § 78.3 (*Definitions*) for the definition of an applicable program), which involve:

(1) A determination that a grant is void;

(2) The disapproval of a recipient's written request for permission to incur an expenditure during the term of a grant; or

(3) A determination made by an authorized ED official with respect to cost allocation plans negotiated with State and local units of government, and indirect cost rates, computer, fringe benefit, and other special rates negotiated with institutions of postsecondary education, State and local government agencies, hospitals, and other nonprofit institutions (except for determinations which are the subject of an appeal filed by the grantee to the Grant Services Contract Appeal Board or to the Armed Services Board of Contract Appeals regarding a contract with the Department); and

(e) Conduct other proceedings as designated by the Secretary of Education (the Secretary) in the FEDERAL REGISTER.

(Authority: 20 U.S.C. 1234(a), 2832(b))

[46 FR 27305, May 18, 1981, as amended at 54 FR 21776, Dec. 19, 1989]

§ 78.3 Definitions.

"Appellant" means an SEA or other recipient that requests:

(a) A review of a final audit determination;

(b) A withholding or termination hearing; or

(c) A hearing regarding a matter described in § 78.2(d) (*Jurisdiction*).

"Applicable program" means any program administered by an authorized ED official except the following student financial assistance programs authorized by Title IV, and governed by regulations promulgated under Section 487, of the Higher Education Act of 1965, as amended:

(a) National Direct Student Loan Program.

(b) College Work-Study Program.

(c) Pell Grant Program, formerly known as the Basic Educational Opportunity Grant Program.

(d) Supplemental Educational Opportunity Grant Program.

(e) Guaranteed Student Loan Program.

(f) Parent Loans for Undergraduate Students Program.

(g) State Student Incentive Grant Program.

"Authorized ED official" means:

(a) The Secretary; or

(b) A person employed by ED who has been designated to act under the Secretary's authority.

"Board" means the Education Appeal Board of ED.

"Board Chairperson" means the Board member designated by the Secretary to serve as administrative officer of the Board.

"Cease and desist" means to discontinue a prohibited practice or initiate a required practice.

"Final audit determination" means a written notice issued by an authorized ED official disallowing expenditures made by a recipient.

"Hearing" means any review proceeding conducted by the Board. A hearing may include a conference, a review of written submissions, an oral argument, or a full evidentiary hearing.

"Panel" means an Education Appeal Board Panel (See § 78.5, (*Panels*)).

"Panel Chairperson" means the person designated by the Board Chairperson to serve as the presiding officer of a Panel.

"Party" means:

(a) The recipient requesting or appearing at a hearing under these regulations;

(b) The authorized ED official who issued:

(1) The final audit determination being appealed, the notice of an intent to withhold or terminate funds, or the cease and desist complaint; or

(2) Any other determination that is the subject of a proceeding before the Board (See § 78.2(d) (*Jurisdiction*) for a list of these determinations.); and

(c) Any person, group, or agency that files an acceptable application to intervene (See § 78.43 (*Intervention*)).

"Recipient" means the named party or entity that initially receives Federal funds under an ED grant or cooperative agreement. For example, for a State-administered program conducted under Title I of the Elementary and Secondary Education Act of 1965, as amended, the SEA is the recipient. This definition does not extend to procurement contracts.

"Suspension" means temporarily stopping payment of Federal funds to a recipient and stopping the recipient's authority to charge costs to a program pending the outcome of a withholding or termination hearing.

"Termination" means ending the payment of Federal funds to a recipient and ending the recipient's authority to charge costs to a program before the recipient's authority to charge costs to a program expires.

"Withholding" means stopping payment of Federal funds to a recipient and stopping the recipient's authority to charge costs to a program, for the period of time the recipient is in violation of a requirement.

(Authority: 20 U.S.C. 1234 (a) and (e))

[46 FR 27305, May 18, 1981, as amended at 54 FR 21776, Dec. 19, 1989]

§ 78.4 Board membership.

The Board consists of 15 to 30 members. Not more than one-third of the Board members may be employees of ED.

(Authority: 20 U.S.C. 1234(c))

§ 78.5 Panels.

(a) (1) For each proceeding before the Board, the Board Chairperson selects a Panel, consisting of at least three members of the Board, and designates one of the Panel members as Panel Chairperson.

(2) The Board Chairperson may designate the entire Board to sit as a Panel for any case or class of cases.

(b) A majority of the members of a Panel must be members of the Board who are not full-time employees of the Federal Government.

(c) No Board member who is a party to, or has had any responsibility for the particular matter assigned to a Panel, may serve on that Panel.

(Authority: 20 U.S.C. 1234 (a), (d), and (e))

§ 78.6 Eligibility for review.

Review under these regulations is available to a recipient that receives a written notice from an authorized ED official of:

(a) A final audit determination;

(b) An intent to withhold or terminate funds;

(c) A cease and desist complaint;

(d) A determination that a grant is void;

(e) The disapproval of a recipient's written request for permission to incur an expenditure during the term of a grant;

(f) A determination with respect to cost allocation plans negotiated with State and local units of government, and indirect cost rates, computer, fringe benefits, and other special rates negotiated with institutions of postsecondary education, State and local government agencies, hospitals, and other nonprofit institutions (except for determinations which are the subject of an appeal filed by the grantee to the Grant Services Contract Appeal Board or to the Armed Services Board of Contract Appeals regarding a contract with the Department); or

(g) Any other proceeding designated by the Secretary.

(Authority: 20 U.S.C. 1234 (a) and (e), 20 U.S.C. 2832(b))

[46 FR 27305, May 19, 1981, as amended at 54 FR 21776, May 19, 1989]

§ 78.7 Exhaustion of remedies.

(a) If a recipient receives a written notice referred to in § 78.6 (*Eligibility for review*) and brings a lawsuit to challenge that notice, the recipient has failed to exhaust administrative remedies and the Secretary may move for dismissal of the lawsuit on that basis.

(b) If the Panel assigned to hear an appeal finds that there are no issues in the appeal within the Board's jurisdiction, the Panel may, at the request of a party or Panel member, issue a decision or order to that effect (See Subpart F—Decisions and Orders).

(Authority: 20 U.S.C. 1234 and 1234(d))

Subpart B—Final Audit Determination

WRITTEN NOTICE

§ 78.11 Written notice of a final audit determination.

(a) An authorized ED official may issue a written notice of a final audit determination to a recipient in connection with an applicable program (See § 78.3 for the definition of applicable program.)

(b) In the written notice, the authorized ED official:

(1) Lists the disallowed expenditures made by the recipient;

(2) Indicates the reasons for the final audit determination in sufficient detail to allow the recipient to respond—for example, by referring to the relevant parts of a separate document, such as an audit report; and

(3) Advises the recipient that it must repay the disallowed expenditures to ED or, within 30 calendar days of its receipt of the written notice, request a review by the Board of the final audit determination.

(c) The authorized ED official sends the written notice to the recipient by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234a(a))

§ 78.12 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination after an application for review is received (See § 78.13 (*Filing an application for review*)) to insure that the written notice meets the requirements of § 78.11(b) (*Written notice of a final audit determination*).

(b) If the Board Chairperson decides that the written notice does not meet the requirements of § 78.11(b) (*Written notice of a final audit determination*), the Board Chairperson returns the determination to the official who issued it so that the determination may be properly modified.

(c) If the official makes the appro- riate modifications and the recipient ishes to pursue its appeal to the oard, the recipient shall amend its pplication for review within 30 calen- ar days of the date it receives the odification.

uthority: 20 U.S.C. 1234 (a) and (e), 234a(b))

APPLICATION FOR REVIEW

78.13 Filing an application for review.

(a) An appellant seeking review of a inal audit determination by the oard shall file a written application or review with the Board Chairperson.

(b) The appellant shall attach a opy of the written notice of a final udit determination to the application r review, and shall, to the satisfac- on of the Board Chairperson:

(1) Identify the issues and facts in ispute; and

(2) State the appellant's position, to- ether with the pertinent facts and asons supporting that position.

(c) The appellant shall file the appli- ation for review no later than 30 cal- ndar days after the date it receives e written notice of the final audit etermination.

uthority: 20 U.S.C. 1234 (a) and (e), 234a(b))

78.14 Acceptance of the application for review.

(a) If the Board Chairperson decides hat an application for review satisfies e requirements of § 78.13 (*Filing an pplication for review*), the Board hairperson issues a notice of the ac- ptance of the application to the ap- ellant and the authorized ED official ho issued the final audit determina- ion.

(b) The Board Chairperson pub- shes a notice of acceptance of the ap- lication in the FEDERAL REGISTER rior to the scheduling of initial pro- edings.

(c) If an acceptable application is led, the Board Chairperson refers e appeal to a Panel, arranges for the heduling of initial proceedings, and rwards to the Panel and parties an itial hearing record that includes:

(1) The final audit determination;

(2) The application for review; and

(3) Other relevant documents, such as audit reports.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234a(b))

§ 78.15 Rejection of the application for review.

(a) If the Board Chairperson determines that an application for review does not satisfy the requirements of § 78.13 (*Filing an application for review*), the Board Chairperson returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application for review is rejected twice, ED may take appropriate administrative action to collect the expenditures disallowed in the final audit determination.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234a(b))

BURDEN OF PROOF

§ 78.16 Burden of proof.

The appellant shall present its case first and has the burden of proving the allowability of the expenditures disallowed in the final audit determination.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234a(b))

Subpart C—Withholding, Termination, Voiding, and Other Cost Determinations

WRITTEN NOTICE

§ 78.21 Written notice of an intent to withhold or terminate funds, void a grant, or of other cost determinations.

(a) An authorized ED official may issue a written notice to a recipient under any applicable program (See § 78.3 (*Definitions*) for the definition of applicable program) of:

(1) An intent to withhold or terminate funds; or

(2) A determination, as described in paragraphs (d) through (f) of § 78.6

(*Eligibility for review*) that a grant is void, that a request to incur an expenditure during the term of a grant is denied, or a determination with respect to cost allocation plans, indirect cost rates, or other special rates.

(b) In the written notice, the authorized ED official:

(1) In the case of an intent to withhold or terminate funds, states the facts that indicate the recipient failed to comply substantially with a requirement that applies to the funds;

(2) In the case of a determination that a grant is void, that an expenditure may not be incurred, or a determination with respect to cost allocation plans, indirect cost rates, or other special rates, states the reasons for the determination;

(3) Cites the requirement that is the basis for the alleged failure to comply or for the determination; and

(4) Advises the recipient that it may request a hearing before the Board.

(c) The authorized ED official sends the written notice to the recipient by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234b(a) and (b))

[46 FR 27305, May 18, 1981, as amended at 54 FR 21776, Dec. 19, 1989]

APPLICATION FOR A HEARING

§ 78.22 Filing an application for a hearing.

(a) An appellant seeking a withholding or termination hearing, or a hearing regarding a determination described in paragraphs (d) through (f) of § 78.6 (*Eligibility for review*), shall file a written application with the Board Chairperson not later than 30 calendar days after the date it receives the written notice.

(b) In the application for a hearing, the appellant shall attach a copy of the written notice and shall, to the satisfaction of the Board Chairperson:

(1) Identify the issues and facts in dispute, and

(2) State the appellant's position, together with the pertinent facts and reasons supporting that position.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234b(b))

[46 FR 27305, May 18, 1981, as amended at 54 FR 21777, Dec. 19, 1989]

§ 78.23 Acceptance of the application.

(a) If the appellant files an application that meets the requirements of § 78.22 (*Filing an application for a hearing*), the Board Chairperson issues a notice of the acceptance of the application to the appellant and to the authorized ED official who issued the notice of the intent to withhold or terminate, or the determination that is the subject of the appeal.

(b) The Board Chairperson publishes a notice of acceptance of the application in the FEDERAL REGISTER, prior to the scheduling of initial proceedings.

(c) If the appellant files an acceptable application, the Board Chairperson refers the appeal to a Panel, arranges for the scheduling of a hearing, and forwards to the Panel and the parties an initial hearing record that includes:

(1) The written notice;

(2) The application for a hearing; and

(3) Other relevant documents.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234b(b))

§ 78.24 Rejection of the application.

(a) If the Board Chairperson determines that an application for a hearing does not satisfy the requirements of § 78.22 (*Filing an application for a hearing*), the Board Chairperson returns the application to the appellant, together with the reasons for the rejection, by certified mail with return receipt requested.

(b) The appellant has 20 calendar days after the date it receives the notice of rejection to file an acceptable application.

(c) If an application is rejected twice, ED takes appropriate administrative action to withhold or terminate funds, or to enforce the final determination in question.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234b(b))

SUSPENSION OF PAYMENTS

§ 78.25 Written notice of an intent to suspend funds.

(a) An authorized ED official may issue to the recipient a written notice of an intent to suspend funds during the course of the withholding or termination hearing.

(b) In the written notice, the authorized ED official:

(1) Indicates the reasons for the suspension; and

(2) Advises the recipient that the suspension becomes effective 10 calendar days after the date the recipient receives the written notice, unless within those 10 calendar days the recipient requests an opportunity to show cause why payments should not be suspended.

(c) The authorized ED official sends the written notice to the recipient by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234b(c))

§ 78.26 Request to show cause.

A recipient seeking an opportunity to show cause why payments should not be suspended shall submit a written request for a show cause hearing to the authorized ED official who issued the written notice.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234b(c))

§ 78.27 Show cause hearing.

(a) If a show cause hearing is requested, the authorized ED official:

(1) Notifies the recipient of the time and place for the hearing; and

(2) Designates a person to conduct the show cause hearing. The designee does not have to be a member of the Board but may not be a party to, or have had any responsibility for, the matter before the Board.

(b) At the show cause hearing, the designee considers matters such as:

(1) The necessity for the suspension of payments;

(2) Possible factual errors in the written notice of the intent to withhold or terminate;

(3) The nature of the violation charged in the written notice of the intent to withhold or terminate; and

(4) Hardship resulting from the suspension.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234b(c))

§ 78.28 Decision.

(a) The designee who conducts the show cause hearing:

(1) Decides whether there should be a suspension during the course of the withholding or termination hearing;

(2) Issues a written decision which includes a statement of findings;

(3) Submits the decision to the Board Chairperson; and

(4) Sends a copy of the decision to the recipient by certified mail with return receipt requested.

(b) The designee's decision is effective on receipt by the recipient and is not subject to review by the Secretary.

(c) The Board Chairperson retains the designee's decision as part of the record of the withholding or termination hearing.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234b(c))

Subpart D—Cease and Desist

WRITTEN NOTICE

§ 78.31 Written notice of a cease and desist complaint.

(a) An authorized ED official may issue a written notice of a cease and desist complaint to a recipient receiving funds under an applicable program (See § 78.3 (*Definitions*) for the definition of an applicable program.). The cease and desist proceeding may be used as an alternative to a withholding or termination hearing.

(b) In the written notice, the authorized ED official:

(1) States the facts that indicate the recipient failed to comply substantially with a requirement that applies to the funds;

(2) Cites the requirement that is the basis for the alleged failure to comply; and

(3) Gives notice of a hearing that is to be held at least 30 calendar days after the date the recipient receives the written notice.

(c) The authorized ED official sends the written notice to the recipient by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234c(a))

HEARING

§ 78.32 Right to appear at the cease and desist hearing.

The recipient has the right to appear at the cease and desist hearing, which is held before a Panel of the Board on the date specified in the complaint.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234c(b))

§ 78.33 Opportunity to show cause.

At the hearing the recipient shall have the opportunity to present reasons why a cease and desist order should not be issued by the Board based on the violation of law stated in the complaint.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234c(b))

ORDER

§ 78.34 Written report and order.

If, after the hearing, the Panel decides that the recipient has violated a legal requirement as stated in the complaint, the Panel:

(a) Makes a written report stating its findings of fact; and

(b) Issues a cease and desist order (See § 78.85 (*The cease and desist report and order.*)).

(Authority: 20 U.S.C. 1234 (a) and (e), 1234c(c))

Subpart E—Practice and Procedure

GENERAL RULES

§ 78.41 Applicability of this subpart.

This subpart applies only to proceedings before the Board.

(Authority: 20 U.S.C. 1234(e))

§ 78.42 Applicability of other laws and regulations.

(a) Sections 554, 556, and 557 of the Administrative Procedure Act (5 U.S.C.) apply to proceedings before the Board with respect to:

(1) The receipt of oral or written testimony;

(2) Notice of the issues to be considered;

(3) The right to counsel;

(4) Intervention of third parties; and

(5) Transcripts of proceedings.

(b) Except as provided in paragraph (c), other provisions of the Administrative Procedure Act and the Federal Rules of Civil Procedure do not apply to proceedings before the Board.

(Authority: Sec. 451(e) of GEPA, 20 U.S.C. 1234(e))

[46 FR 27305, May 18, 1981, as amended at 47 FR 52354, Nov. 19, 1982; 54 FR 21777, Dec. 19, 1989]

§ 78.43 Intervention.

(a) A person, group, or agency with an interest in and having relevant information about a case before the Board may file with the Board Chairperson an application to intervene.

(b) The application to intervene shall contain:

(1) A statement of the applicant's interest; and

(2) A summary of the relevant information.

(c) (1) If the application is filed before a case is assigned to a Panel, the Board Chairperson decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(2) If the application is filed after the Board Chairperson has assigned the case to a Panel, the Panel decides whether approval of the application to intervene will aid the Panel in its disposition of the case.

(d) The Board Chairperson notifies the applicant seeking to intervene and the other parties of the approval or disapproval of the application to intervene.

(e) If an application to intervene is approved, the intervenor becomes a party to the proceedings.

(f) If an application to intervene is disapproved, the applicant may submit to the Board Chairperson an amended application to intervene.

(Authority: 20 U.S.C. 1234(e))

§ 78.44 Representation by counsel.

Parties may be represented by counsel.

(Authority: 20 U.S.C. 1234(e))

§ 78.45 Filing of documents.

(a) An applicant shall file with the Board Chairperson one copy of an application for review or to intervene.

(b) Once a Panel has been assigned, parties shall:

(1) File with the Board Chairperson five copies of all written motions, briefs—including cited materials that are not readily available—and other documents; and

(2) Provide a copy to each of the other parties to the proceedings.

(c) Parties have 25 calendar days from the date of receipt of any motion to file a response with the Board Chairperson, unless the Panel Chairperson grants an extension for a good reason.

(d) The date of filing is the date the document is postmarked or hand-delivered to the Office of the Board Chairperson. If a scheduled filing date occurs on a Saturday, Sunday, or Federal holiday, the next business day is the date of filing.

(Authority: 20 U.S.C. 1234(e))

§ 78.46 Availability of decisions.

The Board Chairperson maintains the files of the Board. The decisions of the Board are available to the public on request and with payment of reproduction costs.

(Authority: 20 U.S.C. 1234(e))

§ 78.47 Communications.

No party shall communicate with the Panel or Board Chairperson on matters under review, except minor procedural matters, unless all parties to the case are given:

(a) Timely and adequate notice of the communication; and

(b) Reasonable opportunity to respond.

(Authority: 20 U.S.C. 1234(e))

§ 78.48 Transcripts.

(a) The Board Chairperson:

(1) Arranges for the preparation of a transcript of each hearing;

(2) Retains the original transcript as part of the record of the hearing; and

(3) Provides one copy of the transcript to each party and Panel member.

(b) Additional copies of the transcript are available on request and with payment of the reproduction fee.

(Authority: 20 U.S.C. 1234(e))

§ 78.49 Subpoenas.

(a) The Panel does not have authority to issue subpoenas.

(b) The Panel may ask a party to provide for oral or written examination one or more available witnesses who have knowledge about the matter under review.

(Authority: 20 U.S.C. 1234(e))

§ 78.50 Exchange of information.

There is no discovery as conducted under the Federal Rules of Civil Procedure, but the parties are encouraged to exchange relevant documents and information.

(Authority: 20 U.S.C. 1234(e))

§ 78.51 Evidence.

The Panel accepts any evidence that it finds is relevant and material to the proceedings. Parties may object to evidence they consider to be irrelevant, immaterial, or unduly repetitious.

(Authority: 20 U.S.C. 1234(e))

§ 78.52 Panel decisions.

Decisions of the Panel are made by a majority of the Panel members.

(Authority: 20 U.S.C. 1234(e))

§ 78.53 Intermediate review.

The parties may not file comments with the Secretary regarding matters under review on any rulings of a Panel until the Panel has reached its decision (See § 78.81 (*The Panel's decision*).).

(Authority: 20 U.S.C. 1234(e))

PANEL PROCEEDINGS

§ 78.61 Authority and responsibilities of Panels.

(a) The Panel may regulate the course of proceedings and the conduct of the parties during the proceedings.

The Panel takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order, including the following:

(1) The Panel may hold conferences or other types of appropriate proceedings to clarify, simplify, or define the issues or to consider other matters that may aid in the disposition of an appeal.

(2) The Panel may require parties to state their positions and to provide all or part of the evidence in writing.

(3) The Panel may require parties to present testimony through affidavits and to conduct cross-examination through interrogatories.

(4) The Panel may direct the parties to exchange relevant documents or information and lists of witnesses, and to send copies to the Panel.

(5) The Panel may receive, rule on, exclude, or limit evidence at any stage of the proceedings.

(6) The Panel may rule on motions and other issues at any stage of the proceedings.

(7) Although hearings are open to the general public, the Panel may establish reasonable rules for public attendance and media coverage of the proceedings.

(8) The Panel may examine witnesses.

(9) The Panel may set reasonable time limits for submission of written documents.

(10) The Panel may end an appeal and issue a decision against a party if that party does not meet the time limits set by the Panel or otherwise delays the Panel.

(b) The Panel may interpret applicable statutes and regulations but may not waive them or rule on their validity.

(Authority: 20 U.S.C. 1234(e))

§ 78.62 Conferences.

(a) The Board Chairperson may schedule a prehearing conference of the Panel members and parties.

(b) A Panel member or party may request a conference of the Panel members and parties except in the case of a show cause proceeding. The Panel Chairperson decides whether a conference is necessary.

(c) At a prehearing or other conference the Panel and the parties may consider subjects such as:

(1) Narrowing and clarifying issues;

(2) Assisting the parties in reaching agreements and stipulations;

(3) Clarifying the positions of the parties;

(4) Presenting the direct case of the parties in writing, in whole or in part, or conducting an oral argument or evidentiary hearing;

(5) Setting dates for the exchange of written documents, the receipt of comments from the parties on the need for an oral argument or evidentiary hearing, and further proceedings before the Panel; and

(6) Requesting the names of witnesses each party wishes to present at an evidentiary hearing and estimates of time for each presentation.

(d) At a prehearing or other conference the parties shall be prepared to respond to the subjects listed in paragraph (c) of this section.

(e) Following a prehearing or other conference the Panel may issue a written statement describing the issues raised, the action taken, and the stipulations and agreements reached by the parties.

(Authority: 20 U.S.C. 1234(e))

PRESENTATION OF CASE

§ 78.71 Written submission normally required.

The parties shall present their positions through briefs and the submission of other documents but may request an oral argument or evidentiary hearing. The Panel shall determine whether an oral argument or evidentiary hearing is needed to clarify the position of the parties.

(Authority: 20 U.S.C. 1234(e))

§ 78.72 Notice of an oral argument or evidentiary hearing.

If the Panel decides that an oral argument or evidentiary hearing is necessary, the Panel Chairperson sends written notice of this decision to all parties. The notice states the time and place of the proceeding and the issues to be considered. The notice may be published in the FEDERAL REGISTER upon the request of a party or Panel member.

(Authority: 20 U.S.C. 1234(e))

§ 78.73 Conduct of a hearing.

A hearing is generally conducted by all the Panel members, but, if circumstances require, a hearing may be conducted by one or more Panel members. All the Panel members shall participate in the Panel's decision.

(Authority: 20 U.S.C. 1234(e))

Subpart F—Decision and Orders

FINAL AUDIT DETERMINATIONS, WITHHOLDINGS, TERMINATIONS, AND OTHER DETERMINATIONS

§ 78.81 The Panel's decision.

The Panel issues a decision in the appeal from the final audit determination, or the intent to withhold or terminate funds, or other determinations that are the subject of the proceedings. The Board Chairperson submits the Panel's decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234a(d), 1234b(d))

§ 78.82 Opportunity to comment on the Panel's decision.

(a) *Initial comments and recommendations.* Each party has the opportunity to file comments and recommendations on the Panel's decision with the Board Chairperson within 15 calendar days of the date the party receives the Panel's decision.

(b) *Responsive comments and recommendations.* The Board Chairperson sends a copy of a party's initial comments and recommendations to each of the other parties by certified mail with return receipt requested. Each party may file responsive comments and recommendations with the Board Chairperson within seven days of the date the party receives the initial comments and recommendations.

(c) The Board Chairperson forwards the parties' initial and responsive comments on the Panel's decision to the Secretary.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234a(d), 1234b(d))

§ 78.83 The Secretary's decision.

(a) The Panel's decision becomes the final decision of the Secretary 60 calendar days after the date the recipient receives the Panel's decision, unless the Secretary, for good cause shown, modifies or sets aside the Panel's decision.

(b) If the Secretary modifies or sets aside the Panel's decision within the 60 days, the Secretary issues a decision that:

(1) Includes a statement of the reasons for this action; and

(2) Becomes the Secretary's final decision 60 calendar days after it is issued.

(c) The Board Chairperson sends a copy of the Secretary's final decision and statement of reasons, or a notice that the Panel's decision has become the Secretary's final decision, to the panel and to each of the parties.

(d) The final decision of the Secretary is the final decision of the Department.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234a(d), 1234b(d), 1234d)

§ 78.84 Collection.

If the final decision of the Secretary sustains the final audit determination, the intent to withhold or terminate funds or other determination, ED takes immediate steps to collect the debt, withhold or terminate funds, or to effect the determination that was the subject of the Board proceedings.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234a(e), 1234b)

CEASE AND DESIST

§ 78.85 The cease and desist report and order.

(a) If the Panel issues a cease and desist report and order (described in § 78.34 (*Written report and order*)), the Board Chairperson sends the report and order to the recipient by certified mail with return receipt requested.

(b) The order becomes final 60 calendar days after the date the order is received by the recipient. The order is not subject to review by the Secretary.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234c(d), 1234d)

§ 78.86 Enforcement.

(a) If the Panel issues a cease and desist report and order, the recipient shall take immediate steps to comply with the order.

(b) If, after a reasonable period of time, the Secretary determines that the recipient has not complied with the cease and desist order, the Secretary may:

(1) Withhold funds payable to the recipient under the affected program, including funds payable for administrative costs, without any further proceedings before the Board; or

(2) Certify the facts of the matter to the Attorney General for enforcement through appropriate proceedings.

(Authority: 20 U.S.C. 1234 (a) and (e), 1234c(e))

PART 79—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF EDUCATION PROGRAMS AND ACTIVITIES

Sec.
79.1 What is the purpose of these regulations?
79.2 What definitions apply to these regulations?
79.3 What programs and activities of the Department are subject to these regulations?
79.4 What are the Secretary's general responsibilities under the Order?
79.5 What is the Secretary's obligation with respect to federal interagency coordinations?
79.6 What procedures apply to the selection of programs and activities under these regulations?
79.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?
79.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance?
79.9 How does the Secretary receive and respond to comments?
79.10 How does the Secretary make efforts to accommodate intergovernmental concerns?
79.11 What are the Secretary's obligations in interstate situations?
79.12 How may a state simplify, consolidate, or substitute federally required state plans?
79.13 [Reserved]

AUTHORITY: 31 U.S.C. 6506; 42 U.S.C. 3334; and E.O. 12372, unless otherwise noted.

SOURCE: 48 FR 29166, June 24, 1983, unless otherwise noted.

§ 79.1 What is the purpose of these regulations?

(a) The regulations in this Part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of Section 401 of the Intergovernmental Cooperation Act of 1968 and Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional, and local coordination for review of proposed federal financial assistance.

(c) These regulations are intended to aid the internal management of the Department, and are not intended to create any right or benefit enforceable at law by a party against the Department or its officers.

(Authority: E.O. 12372)

§ 79.2 What definitions apply to these regulations?

"Department" means the U.S. Department of Education.

"Order" means Executive Order 12372, issued July 14, 1982, amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

(Authority: E.O. 12372)

§ 79.3 What programs and activities of the Department are subject to these regulations?

(a) The Secretary publishes in the FEDERAL REGISTER a list of the Department's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

(b) If a program or activity of the Department that provides Federal financial assistance does not have implementing regulations, the regulations in this part apply to that program or activity.

(c) The following programs and activities are excluded from coverage under this part:

(1) Proposed legislation.

(2) Regulation and budget formulation.

(3) National security matters.

(4) Procurement.

(5) Direct payments to individuals.

(6) Financial transfers for which the Department has no funding discretion or direct authority to approve specific sites or projects (e.g., block grants under Chapter 2 of the Education Consolidation and Improvement Act of 1981).

(7) Research and development national in scope.

(8) Assistance to federally recognized Indian tribes.

(d) In addition to the programs and activities excluded in paragraph (c) of this section, the Secretary may only exclude a Federal financial assistance program or activity from coverage under this part if the program or activity does not directly affect State or local governments.

(Authority: E.O. 12372)

[48 FR 29166, June 24, 1983, as amended at 51 FR 20824, June 9, 1986]

§ 79.4 What are the Secretary's general responsibilities under the Order?

(a) The Secretary provides opportunities for consultation by elected officials of those state and local governments that would provide the nonfederal funds for, or that would be directly affected by, proposed federal financial assistance from the Department.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance, the Secretary, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected official's concerns with proposed federal financial assistance that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

(Authority: E.O. 12372, Sec. 2)

§ 79.5 What is the Secretary's obligation with respect to federal interagency coordination?

The Secretary, to the maximum extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and the Department regarding programs and activities covered under these regulations.

(Authority: E.O. 12372)

§ 79.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with § 79.3 for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Secretary of the Department's programs and activities selected for that process.

(c) A state may notify the Secretary of changes in its selections at any time. For each change, the state shall submit to the Secretary an assurance that the state has consulted with local elected officials regarding the change. The Department may establish deadlines by which states are required to inform the Secretary of changes in their program selections.

(d) The Secretary uses a state's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

(Authority: E.O. 12372, sec. 2)

§ 79.7 How does the Secretary communicate with state and local officials concerning the Department's programs and activities?

(a) [Reserved]

(b)(1) The Secretary provides notice to directly affected state, areawide, regional, and local entities in a state of proposed federal financial assistance if:

(i) The state has not adopted a process under the Order; or

(ii) The assistance involves a program or activity not selected for the state process.

(2) This notice may be made by publication in the FEDERAL REGISTER or other means which the Secretary determine appropriate.

(Authority: E.O. 12372, Sec. 2)

§ 79.8 How does the Secretary provide states an opportunity to comment on proposed federal financial assistance?

(a) Except in unusual circumstances, the Secretary gives State processes or directly affected State, areawide, regional, and local officials and entities—

(1) At least 30 days to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days to comment on proposed Federal financial assistance other than noncompeting continuation awards.

(b) The Secretary establishes a date for mailing or hand-delivering comments under paragraph (a) of this section using one of the following two procedures:

(1) If the comments relate to continuation award applications, the Secretary notifies each applicant and each State Single Point of Contact (SPOC) of the date by which SPOC comments should be submitted.

(2) If the comments relate to applications for new grants, the Secretary establishes the date in a notice published in the FEDERAL REGISTER.

(c) This section also applies to comments in cases in which the review, coordination, and communication with the Department have been delegated.

(d) Applicants for programs and activities subject to Section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

(Authority: E.O. 12372, Sec. 2)

[48 FR 29166, June 24, 1983, as amended at 51 FR 20825, June 9, 1986]

§ 79.9 How does the Secretary receive and respond to comments?

(a) The Secretary follows the procedure in § 79.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a State process recommendation, and identifies it as such, for a program selected under § 79.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional, or local officials and entities if there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of

contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional, and local officials and entities may submit comments to the Department.

(d) If a program or activity is not selected for a state process, state, areawide, regional, and local officials and entities may submit comments to the Department. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the Department by the single point of contact, the Secretary follows the procedures of § 79.10.

(e) The Secretary considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 79.10 of this Part, if those comments are provided by a single point of contact, or directly to the Department by a commenting party.

(Authority: E.O. 12372, Sec. 2)

[48 FR 29166, June 24, 1983, as amended at 51 FR 20825, June 9, 1986]

§ 79.10 How does the Secretary make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in such form as the Secretary deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of the notification.

(Authority: E.O. 12372, Sec. 2)

§ 79.11 What are the Secretary's obligations in interstate situations?

(a) The Secretary is responsible for:

(1) Identifying proposed federal financial assistance that has an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding under § 79.10 if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) In an interstate situation subject to this section, the Secretary uses the procedures in § 79.10 if a state process provides a state process recommendation to the Department through a single point of contact.

(Authority: E.O. 12372, Sec. 2(e))

§ 79.12 How may a state simplify, consolidate, or substitute federally required state plans?

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory re-

quirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Secretary.

(c) The Secretary reviews each state plan that a state has simplified, consolidated or substituted and accepts the plan only if its contents meet federal requirements.

(Authority: E.O. 12372, sec. 2)

§ 79.13 [Reserved]

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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APPENDIX TO PART 80—AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

AUTHORITY: 20 U.S.C. 3474; OMB Circular A—102, unless otherwise noted.

SOURCE: 53 FR 8071 and 8087, Mar. 11, 1988, unless otherwise noted.

Subpart A—General

§ 80.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.3 Definitions.

As used in this part:

"*Accrued expenditures*" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received, (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees, and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"*Accrued income*" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"*Acquisition cost*" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"*Administrative*" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "*programmatic*" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"*Awarding agency*" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"*Cash contributions*" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"*Contract*" means (except as used in the definitions for "*grant*" and "*subgrant*" in this section and except where qualified by "*Federal*") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"*Cost sharing or matching*" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"*Cost-type contract*" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"*Equipment*" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"*Expenditure report*" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"*Federally recognized Indian tribal government*" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"*Government*" means a State or local government or a federally recognized Indian tribal government.

"*Grant*" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"*Grantee*" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"*Local government*" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"*Obligations*" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"*OMB*" means the United States Office of Management and Budget.

"*Outlays*" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"*Percentage of completion method*" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"*Prior approval*" means documentation evidencing consent prior to incurring specific cost.

"*Real property*" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"*Share*", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"*State*" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

(1) The definition of "State" in this section is used for the purpose of determining the scope of Part 80 regulations. Some program regulations contain different definitions for "State" based on program statute eligibility requirements.

"*Subgrant*" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "*grant*" in this part.

"*Subgrantee*" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"*Supplies*" means all tangible personal property other than "*equipment*" as defined in this part.

"*Suspension*" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"*Termination*" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "*Termination*" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"*Terms of a grant or subgrant*" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"*Third party in-kind contributions*" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"*Unliquidated obligations*" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"*Unobligated balance*" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

§ 80.4 Applicability.

(a) *General.* Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 80.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act), and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children), and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 80.4(a) (3) through (8) are subject to Subpart E.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 80.6.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by the Secretary after consultation with OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

Subpart B—Pre-Award Requirements

§ 80.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or

burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474, OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period,

(3) Requiring additional, more detailed financial reports,

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 80.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to:

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to

prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474, OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

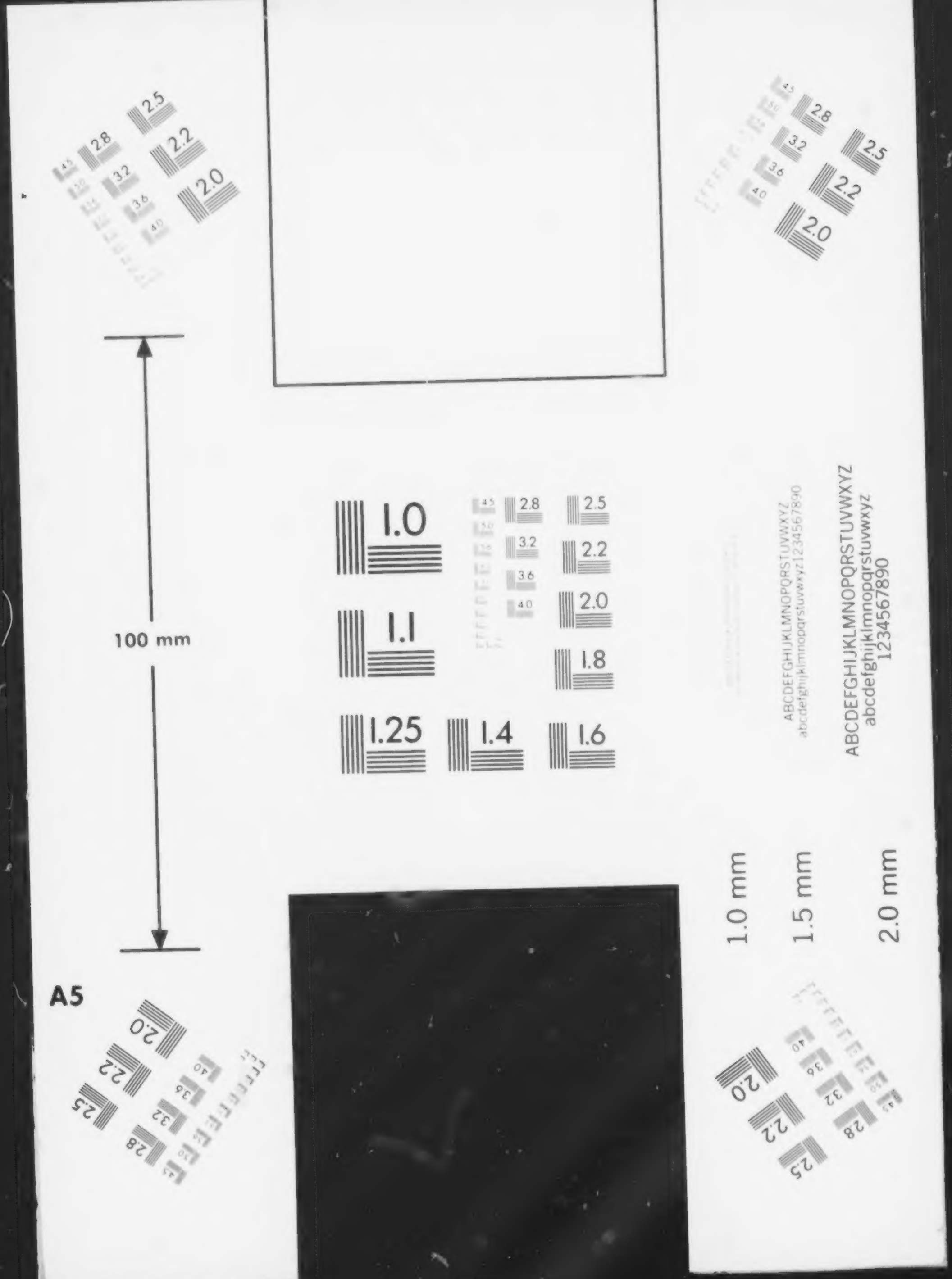
(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon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subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 80.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors, and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) For each kind of organization, there is a set of Federal principles for determining allowable costs. For the costs of a State, local, or Indian tribal government, the Secretary applies the cost principles in OMB Circular A-87, as amended on June 9, 1987.

For the costs of a—	Use the principles in—
State, local or Indian tribal government	OMB Circular A-87
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular	OMB Circular A-122
Educational institutions	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

§ 80.23 Period of availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 80.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 80.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 80.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 80.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 80.31 and 80.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.26 Non-Federal audit.

(a) *Basic rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 80.36 shall be followed.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

NOTE: The requirements for non-Federal audits are contained in the Appendix to Part 80—Audit Requirements for State and Local Governments.

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

CHANGES, PROPERTY, AND SUBAWARDS

§ 80.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 80.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 80.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 80.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

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(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

(d) The provisions of paragraph (c) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631-647.

(Authority: 20 U.S.C. 3474; OMB Circular A 102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988]

§ 80.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 80.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other

identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition*. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment*. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title*. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 80.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

(h) The provisions of paragraphs (c), (d), (e), and (g) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631-647.

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988; 53 FR 49143, Dec. 6, 1988]

§ 80.33 Supplies.

(a) *Title*. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition*. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects the grantee or subgrantee shall compensate the awarding agency for its share.

(Authority: 20 U.S.C. 3474, OMB Circular A-102)

§ 80.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

(Authority: 20 U.S.C. 3474, OMB Circular A-102)

§ 80.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

(Authority: 20 U.S.C. 3474, OMB Circular A-102)

§ 80.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical

purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only:

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 80.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed*—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 80.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms*. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 80.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a "brand name" product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its

procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts other than small purchases).

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation).

(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for

other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $100,000).

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

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(Authority: 20 U.S.C. 3474, OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 80.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 80.10;

(2) Section 80.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § 80.21; and

(4) Section 80.50.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 80.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semiannual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

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(Authority: 20 U.S.C. 3474; OMB Circular A 102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49143, Dec. 6, 1988]

§ 80.41 Financial reporting.

(a) *General* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 80.41(e)(2)(iii).

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 80.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) *Grants that support construction activities paid by reimbursement method.* Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 80.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 80.41(b)(3).

(2) *Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.* (i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 80.41(b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 80.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 80.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 80.41(b)(2).

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§ 80.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 80.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from

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the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(4) A recipient that receives funds under a program subject to 20 U.S.C. 1232f (section 437 of the General Education Provisions Act) shall retain records for a minimum of five years after the starting date specified in paragraph (c) of this section.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required reten-

tion period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988; 53 FR 49143, Dec. 6, 1988]

§ 80.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 80.35).

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.44 Termination for convenience.

Except as provided in § 80.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 80.43 or paragraph (a) of this section.

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(Authority: 20 U.S.C. 3474; OMB Circular A-102)

Subpart D—After-the-Grant Requirements

§ 80.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable).*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § 80.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

(Approved by the Office of Management and Budget under control number 1880-0517)

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 49145, Dec. 6, 1988]

§ 80.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 80.42;

(d) Property management requirements in §§ 80.31 and 80.32; and

(e) Audit requirements in § 80.26.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

APPENDIX TO PART 80—AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

1. *Purpose.* This appendix is issued pursuant to the Single Audit Act of 1984, Pub. L.

98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this appendix.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this appendix, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law, including 34 CFR Part 74.

3. *Definitions.* For the purposes of this appendix the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 9 of this appendix.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audits of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means"

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards, or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resources use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band , nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98-502, is described in the Attachment to this appendix.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has government functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

4. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this appendix. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of 34 CFR Part 74.

d. The auditor shall determine whether.

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations, and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

5. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

6. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

- The amounts reported as expenditures were for allowable services, and
- The records show that those who received services services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

- Matching requirements, levels of effort and earmarking limitations were met,
- Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and
- Amounts claimed or used for matching were determined in accordance with 34 CFR Part 74, Appendix C "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments," and 34 CFR Part 74, Subpart G, "Cost Sharing or Matching."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statues, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

7. *Subrecipients*. State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. determine whether State or local subrecipients have met the audit requirements of this appendix and whether subrecipients covered by 34 CFR Part 74 have met the requirements of that part.

b. determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this appendix, 34 CFR Part 74, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this appendix.

8. *Relation to other audit requirements*. The Single Audit Act provides that an audit made in accordance with this appendix shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this appendix do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this appendix do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this appendix shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

9. *Cognizant agency responsibilities*. The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this appendix.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this appendix.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, or any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this appendix. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this appendix, so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

10. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 11(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

11. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this appendix. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

- A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements.
- Negative assurance on those items not tested.
- A summary of all instances of noncompliance, and
- An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 11f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

12. *Audit Resolution.* As provided in paragraph 9, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

13. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extent the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

14. *Audit Costs.* The cost of audits made in accordance with the provisions of this appendix are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of 34 CFR Part 74, Appendix C, "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

15. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this appendix. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,

—Withholding or disallowing overhead costs, and

—Suspending the Federal assistance agreement until the audit is made.

16. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by 34 CFR Part 74, Subpart P, "Procurement Standards." The standards provide that while recipients are encouraged to enter into intergovermental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

17. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this appendix. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

ATTACHMENT TO APPENDIX

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million
$1 billion	$2 billion	$4 million
$2 billion	$3 billion	$7 million
$3 billion	$4 billion	$10 million
$4 billion	$5 billion	$13 million
$5 billion	$6 billion	$16 million
$6 billion	$7 billion	$19 million
Over $7 billion		$20 million

[50 FR 37358, Sept. 13, 1985. Redesignated at 53 FR 8072, Mar. 11, 1988]

PART 81—GENERAL EDUCATION PROVISIONS ACT—ENFORCEMENT

Subpart A—General Provisions

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APPENDIX TO PART 81—ILLUSTRATIONS OF PROPORTIONALITY

AUTHORITY: 20 U.S.C. 1221e-3(a)(1), 1234-1234i, 3474(a), unless otherwise noted.

SOURCE: 54 FR 19512, May 5, 1989, unless otherwise noted.

Subpart A—General Provisions

§ 81.1 Purpose.

The regulations in this part govern the enforcement of legal requirements under applicable programs administered by the Department of Education and implement Part E of the General Education Provisions Act (GEPA).

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.2 Definitions.

The following definitions apply to the terms used in this part:

"Administrative Law Judge" (ALJ) means a judge appointed by the Secretary in accordance with section 451 (b) and (c) of GEPA.

"Applicable program" means any program for which the Secretary of Education has administrative responsibility, except a program authorized by—

(a) The Higher Education Act of 1965, as amended;

(b) The Act of September 30, 1950 (Pub. L. 874, 81st Congress), as amended; or

(c) The Act of September 23, 1950 (Pub. L. 815, 81st Congress), as amended.

"Department" means the United States Department of Education.

"Disallowance decision" means the decision of an authorized Departmental official that a recipient must return funds because it made an expenditure of funds that was not allowable or otherwise failed to discharge its obligation to account properly for funds. Such a decision, referred to as a "preliminary departmental decision" in section 452 of GEPA, is subject to review by the Office of Administrative Law Judges.

"Party" means either of the following:

(a) A recipient that appeals a decision.

(b) An authorized Departmental official who issues a decision that is appealed.

"Recipient" means the recipient of a grant or cooperative agreement under an applicable program.

"Secretary" means the United States Secretary of Education.

(Authority: 20 U.S.C. 1221e-3(a)(1); 1234 (b), (c), and (f)(1); 1234a(a)(1); 1234i; 3474(a))

§ 81.3 Jurisdiction of the Office of Administrative Law Judges.

(a) The Office of Administrative Law Judges (OALJ) established under section 451(a) of GEPA has jurisdiction to conduct the following proceedings concerning an applicable program:

(1) Hearings for recovery of funds.

(2) Withholding hearings.

(3) Cease and desist hearings.

(b) The OALJ also has jurisdiction to conduct other proceedings designated by the Secretary. If a proceeding or class of proceedings is so designated, the Department publishes a notice of the designation in the FEDERAL REGISTER.

(Authority: 5 U.S.C. 554, 20 U.S.C. 1234(a))

§ 81.4 Membership and assignment to cases.

(a) The Secretary appoints Administrative Law Judges as members of the OALJ.

(b) The Secretary appoints one of the members of the OALJ to be the chief judge. The chief judge is responsible for the efficient and effective administration of the OALJ.

(c) The chief judge assigns an ALJ to each case or class of cases within the jurisdiction of the OALJ.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234 (b) and (c), 3474(a))

§ 81.5 Authority and responsibility of an Administrative Law Judge.

(a) An ALJ assigned to a case conducts a hearing on the record. The ALJ regulates the course of the proceedings and the conduct of the parties to ensure a fair, expeditious, and economical resolution of the case in accordance with applicable law.

(b) An ALJ is bound by all applicable statutes and regulations and may neither waive them nor rule them invalid.

(c) An ALJ is disqualified in any case in which the ALJ has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party's attorney as to make it improper for the ALJ to be assigned to the case.

(d)(1) An ALJ may disqualify himself or herself at any time on the basis of the standards in paragraph (c) of this section.

(2) A party may file a motion to disqualify an ALJ under the standards in paragraph (c) of this section. A motion to disqualify must be accompanied by an affidavit that meets the requirements of 5 U.S.C. 556(b). Upon the filing of such a motion and affidavit, the ALJ decides the disqualification matter before proceeding further with the case.

(Authority: 5 U.S.C. 556(b); 20 U.S.C. 1221e-3(a)(1); 1234(d), (f)(1), and (g)(1); 3474(a))

§ 81.6 Hearing on the record.

(a) A hearing on the record is a process for the orderly presentation of evidence and arguments by the parties.

(b) Except as otherwise provided in this part or in a notice of designation under § 81.3(b), an ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) At a party's request, the ALJ shall confer with the parties in person or by conference telephone call before determining whether an evidentiary hearing or an oral argument is needed.

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.7 Non-party participation.

(a) A person or organization, other than a party, that wishes to participate in a case shall file an application to participate with the ALJ assigned to the case. The application must—

(1) Identify the case in which participation is sought;

(2) State how the applicant's interest relates to the case;

(3) State how the applicant's participation would aid in the disposition of the case; and

(4) State how the applicant seeks to participate.

(b) The ALJ may permit an applicant to participate if the ALJ determines that the applicant's participation—

(1) Will aid in the disposition of the case;

(2) Will not unduly delay the proceedings; and

(3) Will not prejudice the adjudication of the parties' rights.

(c) If the ALJ permits an applicant to participate, the ALJ permits the applicant to file briefs.

(d) (1) In addition to the participation described in paragraph (c) of this section, the ALJ may permit the applicant to participate in any or all of the following ways:

(i) Submit documentary evidence.

(ii) Participate in an evidentiary hearing afforded the parties.

(iii) Participate in an oral argument afforded the parties.

(2) The ALJ may place appropriate limits on an applicant's participation to ensure the efficient conduct of the proceedings.

(e) A non-party participant shall comply with the requirements for parties in § 81.11 and § 81.12.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.8 Representation.

A party to, or other participant in, a case may be represented by counsel.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.9 Location of proceedings.

(a) An ALJ may hold conferences of the parties in person or by conference telephone call.

(b) Any conference, hearing, argument, or other proceeding at which the parties are required to appear in person is held in the Washington, DC metropolitan area unless the ALJ determines that the convenience and necessity of the parties or their representatives requires that it be held elsewhere.

(Authority: 5 U.S.C. 554(b); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.10 Ex parte communications.

A party to, or other participant in, a case may not communicate with an ALJ on any fact in issue in the case or on any matter relevant to the merits of the case unless the parties are given notice and an opportunity to participate.

(Authority: 5 U.S.C. 554(d)(1), 557(d)(1)(A); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.11 Motions.

(a) To obtain an order or a ruling from an ALJ, a party shall make a motion to the ALJ.

(b) Except for a request for an extension of time, a motion must be made in writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(c) If a party files a motion, the party shall serve a copy of the motion on the other party on the filing date by hand-delivery or by mail.

(d) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may deny a motion without awaiting a response.

(e) The date of service of a motion is determined by the standards for determining a filing date in § 81.12(d).

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.12 Filing requirements.

(a) Any written submission to an ALJ or the OALJ under this part must be filed by hand-delivery or by mail.

(b) If a party files a brief or other document with an ALJ or the OALJ, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail.

(c) Any written submission to an ALJ or the OALJ must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d) (1) The filing date for a written submission to an ALJ or the OALJ is either—

(i) The date of hand-delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next business day.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.13 Mediation.

(a) Voluntary mediation is available for proceedings that are pending before the OALJ.

(b) A mediator must be independent of, and agreed to by, the parties to the case.

(c) A party may request mediation by filing a motion with the ALJ assigned to the case. The OALJ arranges for a mediator if the parties to the case agree to mediation.

(d) A party may terminate mediation at any time. Mediation is limited to 120 days unless the mediator informs the ALJ that—

(1) The parties are likely to resolve some or all of the dispute; and

(2) An extension of time will facilitate an agreement.

(e) The ALJ stays the proceedings during mediation.

(f) (1) Evidence of conduct or statements made during mediation is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during mediation.

(2) A mediator may not disclose, in any proceeding under this part, information acquired as a part of his or her official mediation duties that relates to any fact in issue in the case or any matter relevant to the merits of the case.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1) and (h), 3474(a))

§ 81.14 Settlement negotiations.

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations or the approval of a settlement agreement, the ALJ grants the stay.

(b) Evidence of conduct or statements made during settlement negotiations is not admissible in any proceeding under this part. However, evidence that is otherwise discoverable may not be excluded merely because it was presented during settlement negotiations.

(c) The parties may not disclose the contents of settlement negotiations to the ALJ. If the parties enter into a settlement agreement and file a joint motion to dismiss the case, the ALJ grants the motion.

(Authority: 20 U.S.C. 554(c)(1), 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.15 Evidence.

(a) The Federal Rules of Evidence do not apply to proceedings under this part. However, the ALJ accepts only evidence that is—

(1) Relevant;

(2) Material;

(3) Not unduly repetitious; and

(4) Not inadmissible under § 81.13 or § 81.14.

(b) The ALJ may take official notice of facts that are generally known or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(Authority: 5 U.S.C. 556 (d) and (e); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.16 Discovery.

(a) The parties to a case are encouraged to exchange relevant documents and information voluntarily.

(b) The ALJ, at a party's request, may order compulsory discovery described in paragraph (c) of this section if the ALJ determines that—

(1) The order is necessary to secure a fair, expeditious, and economical resolution of the case;

(2) The discovery requested is likely to elicit relevant information with respect to an issue in the case;

(3) The discovery request was not made primarily for the purposes of delay or harassment; and

(4) The order would serve the ends of justice.

(c) If a compulsory discovery is permissible under paragraph (b) of this section, the ALJ may order a party to do one or more of the following:

(1) Make relevant documents available for inspection and copying by the party making the request.

(2) Answer written interrogatories that inquire into relevant matters.

(3) Have depositions taken.

(d) The ALJ may issue a subpoena to enforce an order described in this section and may apply to the appropriate court of the United States to enforce the subpoena.

(e) The ALJ may not compel the discovery of information that is legally privileged.

(f) (1) The ALJ limits the period for discovery to not more than 90 days but may grant an extension for good cause.

(2) At a party's request, the ALJ may set a specific schedule for discovery.

(Authority: 20 U.S.C. 1234(f)(1) and (g))

§ 81.17 Privileges.

The privilege of a person or governmental organization not to produce documents or provide information in a proceeding under this part is governed by the principles of common law as interpreted by the courts of the United States.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.18 The record.

(a) The ALJ arranges for any evidentiary hearing or oral argument to be recorded and transcribed and the transcript made available to the parties upon request at no charge.

(b) The record of a hearing on the record consists of—

(1) All papers filed in the proceeding;

(2) Documentary evidence admitted by the ALJ;

(3) The transcript of any evidentiary hearing or oral argument; and

(4) Rulings, orders, and subpoenas issued by the ALJ.

(Authority: 5 U.S.C. 556(e), 557(c), 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.19 Costs and fees of parties.

The Equal Access to Justice Act, 5 U.S.C. 504, applies by its terms to proceedings under this part. Regulations under that statute are in 34 CFR Part 21.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f), 3474(a))

Subpart B—Hearings for Recovery of Funds

§ 81.20 Basis for recovery of funds.

(a) Subject to the provisions of § 81.21, an authorized Departmental official requires a recipient to return funds to the Department if—

(1) The recipient made an unallowable expenditure of funds under a grant or cooperative agreement; or

(2) The recipient otherwise failed to discharge its obligation to account properly for funds under a grant or cooperative agreement.

(b) An authorized Departmental official may base a decision to require a recipient to return funds upon an audit report, an investigative report, a monitoring report, or any other evidence.

(Authority: 20 U.S.C. 1234a(a) (1) and (2))

§ 81.21 Measure of recovery.

A recipient that made an unallowable expenditure or otherwise failed to discharge its obligation to account properly for funds shall return an amount that—

(a) Meets the standards for proportionality in § 81.22;

(b) In the case of a State or local educational agency, excludes any amount attributable to mitigating circumstances under the standards in § 81.23; and

(c) Excludes any amount expended in a manner not authorized by law more than five years before the recipient received the notice of a disallowance decision under § 81.24.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(k), 1234b (a) and (b), 3474(a))

[54 FR 19512, May 5, 1989; 54 FR 21622, May 19, 1989]

§ 81.22 Proportionality.

(a)(1) A recipient that made an unallowable expenditure or otherwise failed to account properly for funds shall return an amount that is proportional to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which it received the grant or cooperative agreement.

(2) An identifiable Federal interest under paragraph (a)(1) of this section includes, but is not limited to, the following:

(i) Serving only eligible beneficiaries.

(ii) Providing only authorized services or benefits.

(iii) Complying with expenditure requirements and conditions, such as set-aside, excess cost, maintenance of effort, comparability, supplement-not-supplant, and matching requirements.

(iv) Preserving the integrity of planning, application, recordkeeping, and reporting requirements.

(v) Maintaining accountability for the use of funds.

(b) The appendix to this part contains examples that illustrate how the standards for proportionality apply. The examples present hypothetical cases and do not represent interpretations of any actual program statute or regulation.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234b(a) and 3474(a))

§ 81.23 Mitigating circumstances.

(a) A recipient that is a State or local educational agency and that has made an unallowable expenditure or otherwise failed to account properly for funds is not required to return any amount that is attributable to the mitigating circumstances described in paragraph (b), (c), or (d) of this section.

(b) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by erroneous written guidance from the department. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The guidance was provided in response to a specific written request from the recipient that was submitted to the Department at the address provided by notice published in the Federal Register under this section;

(2) The guidance was provided by a Departmental official authorized to provide the guidance, as described by that notice;

(3) The recipient actually relied on the guidance as the basis for the conduct that constituted the violation; and

(4) The recipient's reliance on the guidance was reasonable.

(c) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the Department's failure to provide timely guidance. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The recipient in good faith submitted a written request for guidance with respect to the legality of a proposed expenditure or practice;

(2) The request was submitted to the Department at the address provided by notice published in the Federal Register under this section;

(3) The request—

(i) Accurately described the proposed expenditure or practice; and

(ii) Included the facts necessary for the Department's determination of its legality;

(4) The request contained the certification of the chief legal officer of the appropriate State educational agency that the officer—

(i) Examined the proposed expenditure or practice; and

(ii) Believed it was permissible under State and Federal law applicable at the time of the certification;

(5) The recipient reasonably believed the proposed expenditure or practice was permissible under State and Federal law applicable at the time it submitted the request to the Department;

(6) No Departmental official authorized to provide the requested guidance responded to the request within 90 days of its receipt by the Department; and

(7) The recipient made the proposed expenditure or engaged in the proposed practice after the expiration of the 90-day period.

(d) Mitigating circumstances exist if it would be unjust to compel the recovery of funds because the recipient's violation was caused by the recipient's compliance with a judicial decree from a court of competent jurisdiction. To prove mitigating circumstances under this paragraph, the recipient shall prove that—

(1) The recipient was legally bound by the decree;

(2) The recipient actually relied on the decree when it engaged in the conduct that constituted the violation; and

(3) The recipient's reliance on the decree was reasonable.

(e) If a Departmental official authorized to provide the requested guidance responds to a request described in paragraph (c) of this section more than 90 days after its receipt, the recipient that made the request shall comply with the guidance at the earliest practicable time.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234b(b), 3474(a))

§ 81.24 Notice of a disallowance decision.

(a) If an authorized Departmental official decides that a recipient must return funds under § 81.20, the official gives the recipient written notice of a disallowance decision. The official sends the notice by certified mail, return receipt requested, or other means that ensure proof of receipt.

(b)(1) The notice must state a prima facie case for the recovery of funds.

(2) For the purpose of this section, a prima facie case is a statement of the law and the facts that, unless rebutted, is sufficient to sustain the conclusion drawn in the notice. The facts may be set out in the notice or in a document that is identified in the notice and available to the recipient.

(3) A statement that the recipient failed to maintain records required by law or failed to allow an authorized representative of the Secretary access to those records constitutes a prima facie case for the recovery of the funds affected.

(i) If the recipient failed to maintain records, the statement must briefly describe the types of records that were not maintained and identify the recordkeeping requirement that was violated.

(ii) If the recipient failed to allow access to records, the statement must briefly describe the recipient's actions that constituted the failure and identify the access requirement that was violated.

(c) The notice must inform the recipient that it may—

(1) Obtain a review of the disallowance decision by the OALJ; and

(2) Request mediation under § 81.13.

(d) The notice must describe—

(1) The time available to apply for a review of the disallowance decision; and

(2) The procedure for filing an application for review.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(a), 3474(a))

§ 81.25 Reduction of claims.

The Secretary or an authorized Departmental official as appropriate may, after the issuance of a disallowance decision, reduce the amount of a claim established under this subpart by—

(a) Redetermining the claim on the basis of the proper application of the law, including the standards for the measure of recovery under § 81.21, to the facts;

(b) Compromising the claim under the Federal Claims Collection Standards in 4 CFR Part 103; or

(c) Compromising the claim under § 81.26, if applicable.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(j), 3474(a); 31 U.S.C. 3711)

§ 81.26 Compromise of claims under General Education Provisions Act.

(a) The Secretary or an authorized Departmental official as appropriate may compromise a claim established under this subpart without following the procedures in 4 CFR Part 103 if—

(1)(i) The amount of the claim does not exceed $200,000; or

(ii) The difference between the amount of the claim and the amount agreed to be returned does not exceed $200,000; and

(2) The Secretary or the official determines that—

(i) The collection of the amount by which the claim is reduced under the compromise would not be practical or in the public interest; and

(ii) The practice that resulted in the disallowance decision has been corrected and will not recur.

(b) Not less than 45 days before compromising a claim under this section, the Department publishes a notice in the FEDERAL REGISTER stating—

(1) The intention to compromise the claim; and

(2) That interested persons may comment on the proposed compromise.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(j), 3474(a))

§ 81.27 Application for review of a disallowance decision.

(a) If a recipient wishes to obtain review of a disallowance decision, the recipient shall file a written application for review with the OALJ.

(b) A recipient shall file an application for review not later than 30 days after the date it receives the notice of a disallowance decision. Upon receipt of a copy of the filed material, the authorized Departmental official who made the disallowance decision provides the ALJ with a copy of any document identified in the notice under § 81.24(b)(2).

(c) An application for review must contain—

(1) A copy of the disallowance decision of which review is sought;

(2) A statement certifying the date the recipient received the notice of that decision;

(3) A short and plain statement of the disputed issues of law and fact, the recipient's position with respect to these issues, and the disallowed funds the recipient contends need not be returned; and

(4) A statement of the facts and the reasons that support the recipient's position.

(d) The ALJ who considers a timely application for review that substantially complies with the requirements of paragraph (c) of this section may permit the recipient to supplement or amend the application with respect to issues that were timely raised. Any requirement to return funds that is not timely appealed becomes the final decision of the Department.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(b)(1), 3474(a))

§ 81.28 Consideration of an application for review.

(a) The ALJ assigned to the case under § 81.4 considers an application for review of a disallowance decision.

(b) The ALJ decides whether the notice of a disallowance decision meets the requirements of § 81.24, as provided by section 451(e) of GEPA.

(1) If the notice does not meet those requirements, the ALJ—

(i) Returns the notice, as expeditiously as possible, to the authorized Departmental official who made the disallowance decision;

(ii) Gives the official the reasons why the notice does not meet the requirements of § 81.24; and

(iii) Informs the recipient of the ALJ's decision by certified mail, return receipt requested.

(2) An authorized Departmental official may modify and reissue a notice that an ALJ returns.

(c) If the notice of a disallowance decision meets the requirements of § 81.24, the ALJ decides whether the application for review meets the requirements of § 81.27.

(1) If the application, including any supplements or amendments under § 81.27(d), does not meet those requirements, the disallowance decision becomes the final decision of the Department.

(2) If the application meets those requirements, the ALJ—

(i) Informs the recipient and the authorized Departmental official that the OALJ has accepted jurisdiction of the case; and

(ii) Schedules a hearing on the record.

(3) The ALJ informs the recipient of the disposition of its application for review by certified mail, return receipt requested. If the ALJ decides that the application does not meet the requirements of § 81.27, the ALJ informs the recipient of the reasons for the decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(e) and (f)(1), 1234a(b), 3474(a))

§ 81.29 Submission of evidence.

(a) The ALJ schedules the submission of the evidence, whether oral or documentary, to occur within 90 days of the OALJ's receipt of an acceptable application for review under § 81.27.

(b) The ALJ may waive the 90-day requirement for good cause.

(Authority: 5 U.S.C. 556(d); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(c), 3474(a))

§ 81.30 Burden of proof.

If the OALJ accepts jurisdiction of a case under § 81.28, the recipient shall present its case first and shall have the burden of proving that the recipient is not required to return the amount of funds that the disallowance decision requires to be returned because—

(a) An expenditure identified in the disallowance decision as unallowable was allowable;

(b) The recipient discharged its obligation to account properly for the funds;

(c) The amount required to be returned does not meet the standards for proportionality in § 81.22;

(d) The amount required to be returned includes an amount attributable to mitigating circumstances under the standards in § 81.23; or

(e) The amount required to be returned includes an amount expended in a manner not authorized by law more than five years before the recipient received the notice of the disallowance decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(b)(3), 1234b(b)(1), 3474(a))

§ 81.31 Initial decision.

(a) The ALJ makes an initial decision based on the record.

(b) The initial decision includes the ALJ's findings of fact, conclusions of law, and reasoning on all material issues.

(c) On the day the ALJ makes the initial decision, the ALJ—

(1) Sends the initial decision to the Secretary; and

(2) Sends the initial decision to each of the parties by hand-delivery or by certified mail, return receipt requested.

(d) For the purpose of this part, "initial decision" includes an ALJ's modified decision after the Secretary's remand of a case.

(Authority: 5 U.S.C. 557(c); 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 3474(a))

§ 81.32 Petition for review of an initial decision.

(a) If a party wishes to obtain the Secretary's review of the initial decision of an ALJ, the party files a petition for review with the OALJ, which sends the petition to the Secretary.

(b) A party shall file a petition for review not later than 30 days after the date it receives the initial decision. The party shall file its petition by hand-delivery or by overnight or express mail.

(c) If a party files a petition for review, the party shall serve a copy of the petition on the other party on the filing date by hand-delivery or by overnight or express mail.

(d) A petition for review must contain—

(1) The identity of the initial decision of which review is sought; and

(2) A statement of the reasons asserted by the party for affirming the initial decision, modifying it, or setting it aside in whole or in part.

(e) (1) A party may respond to a petition for review by filing a statement of its views on the issues raised in the petition with the OALJ not later than 15 days after the date it receives the petition. The OALJ sends the statement to the Secretary.

(2) A party shall serve a copy of its statement of views on the other party on the filing date by hand-delivery or by overnight or express mail.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(e), 3474(a))

[54 FR 19512, May 5, 1989, 54 FR 21726, May 10, 1989]

§ 81.33 Review by the Secretary.

(a) The Secretary reviews the initial decision of an ALJ on the petition of a party under § 81.32. An interlocutory decision of an ALJ is not subject to review except as a part of a review of the ALJ's initial decision.

(b) The Secretary's review of an initial decision is based on the record of the case, the initial decision, and any proper submissions of the parties or other participants in the case filed during the review process.

(c) (1) The ALJ's findings of fact, if supported by substantial evidence, are conclusive.

(2) The Secretary, for good cause, may remand the case to the ALJ to take further evidence. The ALJ may make new or modified findings of fact and may modify the initial decision. The new or modified findings, if supported by substantial evidence, are conclusive.

(3) A party may not introduce new evidence after an initial decision unless the Secretary determines that extraordinary circumstances made the introduction of the evidence during the proceeding before the ALJ impossible. If the Secretary permits the introduction of new evidence, the Secretary remands the case to the ALJ.

(d) The Secretary, for good cause, may remand the case to the ALJ for further briefing or for clarification or revision of the initial decision.

(e) (1) If the Secretary modifies or sets aside an initial decision, in whole or in part, the Secretary's decision includes a statement of the reasons that support it.

(2) The Secretary gives a decision to modify, remand, or set aside to the OALJ, which sends the decision to each of the parties by hand-delivery or by mail. If the decision is mailed, the OALJ sends it certified mail, return receipt requested.

(Authority: 5 U.S.C. 557(b), 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(d), 3474(a))

[54 FR 19512, May 5, 1989; 54 FR 21726, May 19, 1989]

§ 81.34 Final decision of the Department.

(a) The ALJ's initial decision becomes the final decision of the Department 60 days after the recipient receives the ALJ's decision unless the Secretary modifies, sets aside, or remands the decision during the 60-day period.

(b) If the Secretary modifies or sets aside the ALJ's initial decision, the Secretary's decision becomes the final decision of the Department on the date the recipient receives the Secretary's decision.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234a(g), 3474(a))

§ 81.35 Collection of claims.

(a) An authorized Departmental official collects a claim established under this subpart by using the standards and procedures in 34 CFR Part 30.

(b) A claim established under this subpart may be collected—

(1) 30 days after a recipient receives notice of a disallowance decision if the recipient fails to file an acceptable application for review under § 81.27; or

(2) On the date of the final decision of the Department under § 81.34 if the recipient obtains review of a disallowance decision.

(c) The Department takes no collection action pending judicial review of a final decision of the Department under section 458 of GEPA.

(d) If a recipient obtains review of a disallowance decision under § 81.28, the Department does not collect interest on the claim for the period between the date of the disallowance decision and the date of the final decision of the Department under § 81.34.

(Authority: 20 U.S.C. 1234(f)(1), 1234a(f)(1) and (2), (i), and (l))

APPENDIX TO PART 81—ILLUSTRATIONS OF PROPORTIONALITY

(1) *Ineligible beneficiaries.* A State uses 15 percent of its grant to meet the special educational needs of children who were migratory, but who have not migrated for more than five years as a Federal program statute requires for eligibility to participate in the program. Result: Recovery of 15 percent of the grant—all program funds spent for the benefit of those children. Although the services were authorized, the children were not eligible to receive them.

(2) *Ineligible beneficiaries.* A Federal program designed to meet the special educational needs of gifted and talented children requires that at least 80 percent of the children served in any project must be identified as gifted or talented. A local educational agency (LEA) conducts a project in which 76 students are identified as gifted or talented and 24 are not. The project was designed and implemented to meet the special educational needs of gifted and talented students. Result: The LEA must return five percent of the project costs. The LEA provided authorized services for a project in which the 76 target students had to constitute at least 80 percent of the total. Thus, the maximum number of non-target students permitted

was 10. Project costs relating to the remaining five students must be returned.

(3) *Ineligible beneficiaries.* Same as the example in paragraph (2), except that only 15 percent of the children were identified as gifted or talented. On the basis of the low percentage of these children and other evidence, the authorized Departmental official finds that the project as a whole did not address their special educational needs and was outside the purpose of the statute. Result: The LEA must return its entire award. The difference between the required percentage of gifted and talented children and the percentage actually enrolled is so substantial that, if consistent with other evidence, the official may reasonably conclude the entire grant was misused.

(4) *Ineligible beneficiaries.* Same as the example in paragraph (2), except that 60 percent of the children were identified as gifted or talented, and it is not clear whether the project was designed or implemented to meet the special educational needs of these children. Result: If it is determined that the project was designed and implemented to serve their special educational needs, the LEA must return 25 percent of the project costs. A project that included 60 target children would meet the requirement that 80 percent of the children served be gifted and talented if it included no more than 15 other children. Thus, while the LEA provided authorized services, only 75 percent of the beneficiaries were authorized to participate in the project (60 target children and 15 others). If the authorized Departmental official, after examining all the relevant facts, determines that the project was not designed and implemented to serve the special educational needs of gifted or talented students, the LEA must return its entire award because it did not provide services authorized by the statute.

(5) *Unauthorized activities.* An LEA uses ten percent of its grant under a Federal program that authorizes activities only to meet the special educational needs of educationally deprived children to pay for health services that are available to all children in the LEA. All the children who use the Federally funded health services happen to be educationally deprived, and thus eligible to receive program services. Result: Recovery of ten percent of the grant—all program funds spent for the health services. Although the children were eligible to receive program services, the health services were unrelated to a special educational need and, therefore, not authorized by law.

(6) *Set-aside requirement.* A State uses 22 percent of its grant for one fiscal year under a Federal adult education program to provide programs of equivalency to a certificate of graduation from a secondary school. The adult education program statute restricts those programs to no more than 20 percent of the State's grant. Result: Two percent of the State's grant must be returned. Although all 22 percent of the funds supported adult education, the State had no authority to spend more than 20 percent on secondary school equivalency programs.

(7) *Set-aside requirement.* A State uses eight percent of its basic State grant under a Federal vocational education program to pay for the excess cost of vocational education services and activities for handicapped individuals. The program statute requires a State to use ten percent of its basic State grant for this purpose. Result: The State must return two percent of its basic State grant, regardless of how it was used. Because the State was required to spend that two percent on services and activities for handicapped individuals and did not do so, it diverted those funds from their intended purposes, and the Federal interest was harmed to that extent.

(8) *Excess cost requirement.* An LEA uses funds reserved for the disadvantaged under a Federal vocational education program to pay for the cost of the same vocational education services it provides to non-disadvantaged individuals. The program statute requires that funds reserved for the disadvantaged must be used to pay only for the supplemental or additional costs of vocational education services that are not provided to other individuals and that are required for disadvantaged individuals to participate in vocational education. Result: All the funds spent on the disadvantaged must be returned. Although the funds were spent to serve the disadvantaged, the funds were available to pay for only the supplemental or additional costs of providing services to the disadvantaged.

(9) *Maintenance-of-effort requirement.* An LEA participates in a Federal program in fiscal year 1988 that requires it to maintain its expenditures from non-Federal sources for program purposes to receive its full allotment. The program statute requires that non-Federal funds expended in the first preceding fiscal year must be at least 90 percent of non-Federal funds expended in the second preceding fiscal year and provides for a reduction in grant amount proportional to the shortfall in expenditures. No waiver of the requirement is authorized. In fiscal year 1986 the LEA spent $100,000 from non-Federal sources for program purposes; in fiscal year 1987, only $87,000. Result: The LEA must return 1/30 of its fiscal year 1988 grant the amount of its grant that equals the proportion of its shortfall ($3,000) to the required level of expenditures ($90,000). If, instead, the statute made maintenance of expenditures a clear condition of the LEA's eligibility to receive funds and did not provide for a proportional

reduction in the grant award, the LEA would be required to return its entire grant.

(10) *Supplanting prohibition.* An LEA uses funds under a Federal drug education program to provide drug abuse prevention counseling to students in the eighth grade. The LEA is required to provide that same counseling under State law. Funds under the Federal program statute are subject to a supplement-not supplant requirement. Result: All the funds used to provide the required counseling to the eighth-grade students must be returned. The Federal funds did not increase the total amount of spending for program purposes because the counseling would have been provided with non-Federal funds if the Federal funds were not available.

(11) *Matching requirement.* A State receives an allotment of $90,000 for fiscal year 1988 under a Federal adult education program. It expends its full allotment and $8,000 from its own resources for adult education. Under the Federal statute, the Federal share of expenditures for the State's program is 90 percent. Result: The State must return the unmatched Federal funds, or $18,000. Expenditure of a $90,000 Federal allotment required $10,000 in matching State expenditures, $2,000 more than the State's actual expenditures. At a ratio of one State dollar for every nine Federal dollars, $18,000 in Federal funds were unmatched.

(12) *Application requirements.* In order to receive funds under a Federal program that supports a wide range of activities designed to improve the quality of elementary and secondary education, an LEA submits an application to its State educational agency (SEA) for a subgrant to carry out school-level basic skills development programs. The LEA submits its application after conducting an assessment of the needs of its students in consultation with parents, teachers, community leaders, and interested members of the general public. The Federal program statute requires the application and consultation processes. The SEA reviews the LEA's application, determines that the proposed programs are sound and the application is in compliance with Federal law, and approves the application. After the LEA receives the subgrant, it unilaterally decides to use 20 percent of the funds for gifted and talented elementary school students—an authorized activity under the Federal statute. However, the LEA does not consult with interested parties and does not amend its application. Result: 20 percent of the LEA's subgrant must be returned. The LEA had no legal authority to use Federal funds for programs or activities other than those described in its approved application, and its actions with respect to 20 percent of the subgrant not only impaired the integrity of the application process, but caused significant harm to other Federal interests associated with the program as follows: the required planning process was circumvented because the LEA did not consult with the specified local interests; program accountability was impaired because neither the SEA nor the various local interests that were to be consulted had an opportunity to review and comment on the merits of the gifted and talented program activities, and the LEA never had to justify those activities to them; and fiscal accountability was impaired because the SEA and those various local interests were, in effect, misled by the LEA's unamended application regarding the expenditure of Federal funds.

(13) *Harmless violation.* Under a Federal program, a grantee is required to establish a 15-member advisory council of affected teachers, school administrators, parents, and students to assist in program design, monitoring, and evaluation. Although the law requires at least three student members of the council, a grantee's council contains only two. The project is carried out, and no damage to the project attributable to the lack of a third student member can be identified. Result: No financial recovery is required, although the grantee must take other appropriate steps to come into compliance with the law. The grantee's violation has not measurably harmed a Federal interest associated with the program.

(Authority: 20 U.S.C. 1221e-3(a)(1), 1234(f)(1), 1234b(a), 3474(a))

[54 FR 19512, May 5, 1989; 54 FR 21622, May 19, 1989]

PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

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APPENDIX A TO PART 85—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS
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APPENDIX C TO PART 85—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

AUTHORITY: E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 20 U.S.C. 3474, 1221e-3(a)(1).

SOURCE: 53 FR 19191 and 19204, May 26, 1988, unless otherwise noted.

Subpart A—General

§ 85.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Except as provided in § 85.200, Debarment or Suspension, § 85.201, Treatment of Title IV, HEA participation, and § 85.215, Exception provision, debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 85.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (b)(1), 1094(c)(1)(D), 3474)

[53 FR 19191 and 19204, May 26, 1988, as amended at 53 FR 19191, May 26, 1988]

§ 85.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Participant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *ED.* The U.S. Department of Education.

(Authority: E.O. 12549; 20 U.S.C. 3474)

[53 FR 19191 and 19204, May 26, 1988, as amended at 53 FR 19192, May 26, 1988]

§ 85.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(1) Principal investigators.

(2) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 85.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 85.110(a). Sections 85.325, "Scope of debarment," and 85.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Subpart B—Effect of Action

§ 85.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law and subject to § 85.201, Treatment of Title IV, HEA participation, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, ED shall not enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 85.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law and subject to § 85.210, Treatment of Title IV, HEA participation, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transaction (see § 85.110(a)(1)(ii)) for the period of their debarment or suspension. Such persons shall also be excluded from all contracts to provide federally-required audit services regardless of contract amount.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

[53 FR 19191 and 19204, May 26, 1988, as amended at 53 FR 19192, May 26, 1988]

§ 85.201 Treatment of Title IV, HEA participation.

(a)(1) The debarment of an educational institution under E.O. 12549 pursuant to procedures that comply with 5 U.S.C. 554-557 (formal adjudication requirements under the Administrative Procedures Act) terminates the institution's eligibility to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended, for the duration of the debarment.

(2)(i) The suspension of an educational institution under E.O. 12549 pursuant to procedures that comply with 5 U.S.C. 554-557 suspends the institution's eligibility to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended.

(ii) The suspension of Title IV eligibility lasts for a period of 60 days, beginning on the date of the suspending official's decision, except that it may last longer if the institution and the Secretary agree to an extension or if the Secretary initiates a limitation or termination proceeding against the institution under 34 CFR Part 668, Subpart G, prior to the 60th day.

(b)(1) Except as provided in paragraph (a) of this section, the debarment, suspension, proposed debarment, or proposed suspension of an educational institution or lender under E.O. 12549 does not affect the eligibility of the institution or lender to participate in any student financial assistance program authorized by Title IV of the Higher Education Act of 1965, as amended.

(2)(i) The Secretary initiates a debarment or suspension proceeding under § 85.310 or § 85.414, respectively, against an educational institution that is suspended or debarred under E.O. 12549 by ED or another Federal agency if the procedures used did not comply with 5 U.S.C. 554-557.

(ii) The Secretary conducts an audit or program review of any lender that is debarred or suspended by ED or another Federal agency, to determine whether grounds exist for the initiation of a fine, limitation, suspension, or termination action against the lender under 34 CFR Part 668, Subpart G.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

[53 FR 19192, May 26, 1988]

§ 85.205 Ineligible persons.

Persons who are ineligible, as defined in § 85.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 85.315 are excluded in accordance with the terms of their settlements. ED shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.215 Exception provision.

ED may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 85.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 85.505(a).

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Except as provided in § 85.201, Treatment of Title IV, HEA participation, and § 85.215, Exception provision, the Secretary shall not, and participants shall not, renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible or voluntary excluded.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

[53 FR 19191 and 19204, May 26, 1988, as amended at 53 FR 19192, May 26, 1988]

§ 85.225 Failure to adhere to restrictions.

Except as permitted under § 85.215 or § 85.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

(Authority: E.O. 12549, 20 U.S.C. 3474)

Subpart C—Debarment

§ 85.300 General.

The debarring official may debar a person for any of the causes in § 85.305, using procedures established in §§ 85.310 through 85.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

(Authority: E.O. 12549, 20 U.S.C. 3474)

§ 85.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 85.300 through 85.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 85.215 or § 85.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 85.315 or of any settlement of a debarment or suspension action

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § 85.615 of this part.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

(Authority: E.O. 12549, 20 U.S.C. 3474)

[53 FR 19191 and 19204, May 26, 1988, as amended at 54 FR 4950 and 4960, Jan. 31, 1989]

§ 85.310 Procedures.

ED shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 85.311 through 85.314.

(Authority: E.O. 12549, 20 U.S.C. 3474)

§ 85.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 85.305 for proposing debarment;

(d) Of the provisions of § 85.311 through § 85.314, and any other ED procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 85.215 or the debarment or suspension is against—

(A) An educational institution under procedures that do not meet the requirements of § 85.201(a); or

(B) A lender participating in the Title IV, Part B, HEA program.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

[53 FR 19161 and 19204, May 26, 1988, as amended at 53 FR 19192, May 26, 1988]

§ 85.315 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, ED may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.316 Procedures for Title IV, HEA debarments.

(a)(1) If the Secretary debars an educational institution under E.O. 12549, the Secretary uses the following procedures in connection with the debarment to ensure that the debarment also precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(i) The procedures in § 85.312, Notice of proposed debarment, and § 85.314(d), Notice of debarring official's decision.

(ii) Instead of the procedures in § 85.313 and § 85.314(a)-(c), the procedures in 34 CFR Part 668, Subpart G.

(2) An administrative law judge shall act as the debarring official for proceeding under this section.

(b) On appeal from a decision debarring an educational institution, the Secretary issues a final decision after all parties have filed their written materials with the Secretary.

(c) In such a proceeding, in addition to the findings and conclusions required by 34 CFR Part 668, Subpart G, the debarring official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for debarment as set forth in § 85.305.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

[53 FR 19193, May 26, 1988]

§ 85.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* § 85.305(c)(5)), the period of debarment shall not exceed five years.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 85.311 through 85.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

(Authority: E.O. 12549; 20 U.S.C. 3474)

[53 FR 19191 and 19204, May 26, 1988, as amended at 54 FR 4950 and 4960, Jan. 31, 1989]

§ 85.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 85.311 through 85.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Subpart D—Suspension

§ 85.400 General.

(a) The suspending official may suspend a person for any of the causes in § 85.405 using procedures established in §§ 85.410 through 85.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 85.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 85.400 through 85.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 85.305(a); or

(2) That a cause for debarment under § 85.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* ED shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in §§ 85.411 through 85.413.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 85.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of §§ 85.411 through 85.413 and any other ED procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 85.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment, in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.414 Procedures for Title IV, HEA suspensions under E.O. 12549.

(a) *Title IV E.O. 12549 suspensions.* (1) If the Secretary suspends an educational institution under E.O. 12549, the Secretary uses the following procedures in connection with the suspension to ensure that the suspension also precludes participation under Title IV of the Higher Education Act of 1965, as amended:

(i) The procedures in § 85.411, Notice of suspension.

(ii) Instead of the procedures in §§ 85.412, 85.413, and 85.415, the procedures in 34 CFR Part 668, Subpart G.

(2) An administrative law judge shall act as the suspending official for proceeding under this section.

(3) In such a proceeding, in addition to the findings and conclusions required by 34 CFR Part 668, Subpart G, the suspending official, and, on appeal, the Secretary, determine whether there exist sufficient grounds for suspension under E.O. 12549 as set forth in § 85.405.

(b) *Continued assistance under Title IV, HEA.* The institution may continue its participation in the Title IV programs until the procedures described in paragraph (a) of this section, except for those relating to appeals to the Secretary, have been completed, unless the Secretary takes an emergency action under 34 CFR Part 668, Subpart G.

(Authority: E.O. 12549; 20 U.S.C. 1082(a)(1) and (h)(1), 1094(c)(1)(D), 3474)

[53 FR 19193, May 26, 1988]

§ 85.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 85.325), except that the procedures of §§ 85.410 through 85.413 shall be used in imposing a suspension.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Subpart E—Responsibilities of GSA, ED and Participants

§ 85.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.505 ED responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which ED has granted exceptions under § 85.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 85.500(b) and of the exceptions granted under § 85.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) ED officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) ED officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

(Authority: E.O. 12549; 20 U.S.C. 3474)

§ 85.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not

debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to ED if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

(Authority: E.O. 12549; 20 U.S.C. 3474)

Subpart F—Drug-Free Workplace Requirements (Grants)

SOURCE: 54 FR 4950 and 4960, Jan. 31, 1989, unless otherwise noted.

§ 85.600 Purpose.

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

§ 85.605 Definitions.

(a) Except as amended in this section, the definitions of § 85.105 apply to this subpart.

(b) For purposes of this subpart—

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance;

(4) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of

a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a grant directly from a Federal agency;

(9) "Individual" means a natural person.

§ 85.610 Coverage.

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

(c) The provisions of Subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

§ 85.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certificaiton under § 85.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) of the certification for grantees other than individuals (Alternate I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternate II to Appendix C); or

(c) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

§ 85.620 Effect of violation.

(a) In the event of a violation of this subpart as provided in § 85.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § 85.320(a)(2) of this part).

§ 85.625 Exception provision.

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

§ 85.630 Grantees' responsibilities.

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency from which it obtains grants in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

APPENDIX A TO PART 85—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX B TO PART 85—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILTY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX C TO PART 85—CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

Certification Regarding Drug-Free Workplace Requirements

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

____

____

____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

[54 FR 4950 and 4960, Jan. 31, 1989]

Records (19), (24), (31), (37), (44), (46-49), (61), (62), (73), (78), (101), (102), (103), (105), (116), (142), (144), (169), (172)
Regression effect (139), (141)
Regular program (34-36), (73), (105), (112), (130-133), (152)
Reliability (75), (121), (138)
Replacement project (106-111)
Reporting requirements (125), (133), (147)
Representative sample (123), (136)

Salary costs (24), (169)
Sampling (129), (133), (134), (136), (139), (142), (148), (164)
School counselors (23)
School social workers (102)
Schoolwide (23), (37), (67-75), (86), (87), (143), (145), (146), (158-160)
Schoolwide project (67-75), (86), (87), (145), (146), (158-160)
Schoolwide project plan (68), (69), (74), (159)
Selection of schools (154)
Selection of students (62), (124)
Single Audit Act (42), (48)
Size, scope, and quality (35), (60), (67), (71)
Special education (36), (37), (64), (73), (113), (117)
Special State or local programs (172)
Spring-spring testing (128), (129)
Spring-to-spring (120), (124), (127)
State administration (15), (165), (167), (168)
State administration funds (15)
State minimum grant (3), (8), (9)
State per pupil expenditure (1-2)
Statewide allocations (4)
Student achievement (119), (120), (123), (127), (128), (135), (138)
Student program improvement (136), (137), (149), (161), (162)
Student/instructional staff ratios (101-103)
Subgrants (1), (7), (45)
Substantial progress (33), (35), (74), (80), (113), (121), (149-157), (161), (162), (163)
Substitute teaching (171)
Supervisory duties (169-171)
Supplement, not supplant (72), (99), (103-106), (111), (112), (114-116), (117)
Supplemental appropriation (14)
Suspension (45), (50), (170)
Sustained effects (120), (128-131), (135), (143), (144), (164)
Sustained gains (129)

Technical assistance center (TAC) (140), (141)
Teacher judgment (141)
Teachers (23-25), (29), (34-37), (59), (68), (69), (77), (84), (88), (101), (102), (104), (105), (107-111), (113), (115), (152), (167), (169), (170)
Technical assistance (39), (140), (164), (165), (169), (172)
Technical standards (75), (135)
Timelines (20), (21), (103), (152)
Training (23), (25), (29), (37), (69), (73), (77-81), (142), (169), (170), (172)
Travel and conference costs (28)
25 percent rule (54), (56), (57)

Uses of funds (23), (73), (105)

Validity (75), (121), (137), (139), (147)

Waiver (14), (15), (47), (99), (100)

Year-round services (23)